

4-22-2014

Mitchell v. State Clerk's Record Dckt. 41882

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IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RYAN M. MITCHELL,)	
)	
Plaintiff-Appellant,	)	Supreme Court No. 41882
)	
v.)	
)	
GERALD DURK SIMPSON, an individual,)	
STATE OF IDAHO, a governmental entity))	
and BANNOCK COUNTY, IDAHO, a)	
political subdivision, SUSAN SIMPSON,)	
as Conservator and Guardian of Gerald)	
Durk Simpson, and DOES 1-25,)	
)	
Defendant-Respondents,)	
)	
)	
)	

CLERK'S RECORD

Appeal from the District Court of the Sixth Judicial District of the State of
Idaho, in and for the County of Bannock.

Before **HONORABLE Robert C. Naftz** District Judge.

For Appellant:

William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, Idaho 83701-1743

For Respondent:

Thomas B. High
Bren E. Mollerup
BENOIT, ALEXANDER,
HARWOOD & HIGH, L.L.P.
P.O. Box 366
Twin Falls, Idaho 83303-0366

Ryan M. Mitchell vs. Gerald Durk Simpson, State of Idaho, Bannock County, Susan Simpson

Date	Code	User		Judge
9/25/2012	LOCT	MARLEA	Clerk's	Stephen S Dunn
	NCOC	MARLEA	New Case Filed-Other Claims	Stephen S Dunn
	COMP	MARLEA	complaint and Demand for Jury Trial	Stephen S Dunn
	SMIS	MARLEA	Summons Issued	Stephen S Dunn
		MARLEA	Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: mauk & burgoyne Receipt number: 0033876 Dated: 9/25/2012 Amount: \$96.00 (Check) For:	Stephen S Dunn
	ATTR	CINDYBF	Plaintiff: Mitchell, Ryan M. Attorney Retained William L Mauk	Stephen S Dunn
10/12/2012		DCANO	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Racine, Olson Receipt number: 0036077 Dated: 10/12/2012 Amount: \$17.00 (Check)	Stephen S Dunn
1/31/2013	AMCO	CAMILLE	First Amended Complaint and Demand for Jury Trial; aty Briane Nelson Mitchell for plntf	Stephen S Dunn
	SMIS	CAMILLE	Summons Issued (2)	Stephen S Dunn
2/8/2013		CAMILLE	Affidavit of service - s/ Sally Anderson to Briane Nelson Mitchell	Stephen S Dunn
		CAMILLE	Notice of service - Plaintiffs first set of requests for admission pursuant to IRCP 36 to Def State of Idaho; plaintiffs first set of document requests to the state of Idaho; and plntfs first set of Interrog to the state of Idaho: aty William Mauk	Stephen S Dunn
2/15/2013		CAMILLE	Notice of Appearance; aty Tom High for ef State of Idaho	Stephen S Dunn
2/25/2013		CAMILLE	Answer filed; aty Thomas High	Stephen S Dunn
	ATTR	CAMILLE	Defendant: State of Idaho Attorney Retained Thomas B High	Stephen S Dunn
		CAMILLE	Notice of service of discovery document; aty Thomas High for def State of Idaho	Stephen S Dunn
2/27/2013	ANSW	CAMILLE	Answer to plaintiffs first amended complaint; aty Ian Service	Stephen S Dunn
	ATTR	CAMILLE	Defendant: Bannock County Attorney Retained Ian Service	Stephen S Dunn
3/1/2013		CAMILLE	Affidavit of service - srvd on Ryan Mitchell on 2-8-2013 (sums and complaint)	Stephen S Dunn
		CAMILLE	Notice of service - (plaintiffs first set of requests for admission pursuant to IRCP 36 to def Bannock County) aty William Mauk for plntf	Stephen S Dunn
3/4/2013		CAMILLE	Notice of service of discovery document; (Amdned Responses to plaintiffs) aty Tom High for def SState of Idaho	Stephen S Dunn

Case: CV-2012-0004124-OC Current Judge: Robert C Naftz
Ryan M. Mitchell vs. Gerald Durk Simpson, etal.

Ryan M. Mitchell vs. Gerald Durk Simpson, State of Idaho, Bannock County, Susan Simpson

Date	Code	User	Judge
3/27/2013		CAMILLE Entry of service - srvd on Susan Simpson on 2-18-2013	Stephen S Dunn
		CAMILLE Entry of service - srvd on Gerald Durk Simpson on 2-18-2013	Stephen S Dunn
4/4/2013		CAMILLE Notice of service of discovery documents; (Answers to plaintiffs First set of interrogatories to efendant State of Idaho; responses to plaintiffs first set of document reaquests to def State of Idaho and Privilege and statutory exemption log: aty Tom High for Def/	Stephen S Dunn
		CAMILLE Response to Plaintiffs First sert of interog Bannock County; aty Ian Service	Stephen S Dunn
		CAMILLE Defendant Bannock County response to first set of plaintiffs requests for admissions: aty Ian Service	Stephen S Dunn
		CAMILLE Response to plaintiffs first document request by Defendant Bannock County;' aty Ian Service	Stephen S Dunn
6/12/2013		CAMILLE Stipulation consent Decree and final judgment between Ryan M Mitchell and Bannock county; aty Briane Nelson Mitchell	Stephen S Dunn
6/28/2013		CAMILLE Motion for summary judgment; aty Thomas High for def State of Idaho	Stephen S Dunn
		CAMILLE Memorandum in support of motin for summary judgment; aty Thomas High for Def. State of Idaho	Stephen S Dunn
		CAMILLE Affidavit in support of motion for summary judgment; aty Thomas High for Def. State of Idaho	Stephen S Dunn
		CAMILLE Affidavit of Jodi Osborn.; aty Thomas High for def State of Idaho	Stephen S Dunn
		CAMILLE Statement of undisputed Facts: aty Thomas High for Def. State of Idaho	Stephen S Dunn
7/17/2013		CAMILLE Notice of service of discovery documents; Plaintiffs first set of interog to defs state of idaho; first supplemental responses to plaintiffs first set of document request to def State of Idaho and privilege and statutory exemption log; aty Tom High for def	Stephen S Dunn
7/18/2013		CAMILLE Notice of hearing; set for 8-5-2013 @ 3pm:	Stephen S Dunn
	HRSC	CAMILLE Hearing Scheduled (Hearing Scheduled 08/05/2013 03:00 PM)	Stephen S Dunn
7/22/2013		CAMILLE Amended notice of hearing; (defs Sate of Idahos Motin for Summary Judgment;) on 8-12-2013 @ 4pm:	Stephen S Dunn
	HRSC	CAMILLE Hearing Scheduled (Motion for Summary Judgment 08/12/2013 04:00 PM)	Stephen S Dunn

Ryan M. Mitchell vs. Gerald Durk Simpson, State of Idaho, Bannock County, Susan Simpson

Date	Code	User	Judge
7/26/2013	NOTC	KARLA	Notice of Intent to Take Defalult Against Def Gerald Durk Simpson and Def Susan Simpson, Guardian/Conservator for Gerald Durk Simpson (Mitchell for Plaintiff)
	APPL	KARLA	Application for Entry of Default Aganing Def Gerald Durk Simpson and Def Susan Simpson, Guardian/Conservator for Gerald Durk Simpson (Mitchell for Plaintiff)
	AFFD	KARLA	Affidavit of Briane Nelson Mitchell in Support of Defalut Against Def Gerald Durk Simpson and Def Susan Simpson, Guardian/Conservator for Gerald Durk Simpson
	NOTC	KARLA	Notice of Rule 30(b)(6) Deposition (Mitchell for Plaintiff)
	NOTC	KARLA	Notice of Deposition of Dr. Heath Sommer (Mitchell for Plaintiff)
		CINDYBF	Default Judgment- default entered against Gerald Simpson and Susan Simpson as conservator/guardian of Geral Simpson on the 3rd and 4th causes of action in the 1st Amended Complaint. Plaintiff shall be allowed to submit evident from the court can determine the amount of damages, fees and costs that shall be awarded. s/Dunn 7-26-13.
7/29/2013		CAMILLE	Memorandum in opposition to states motion for summary judgment; aty William Mauk for plntf
		CAMILLE	Plaintiffs statement of undisputed facts and response to states statement of undisputed facts in connection with the states motion for summary judgment: aty William Mauk for plntf
		CAMILLE	Affidavit of Sally Anderson in support of plaintiffs opposition to States Motion for Summary Judgment; aty William Mauk for plntf
7/30/2013		CAMILLE	Motion for protective Order; aty Tom High for def
8/1/2013		CAMILLE	Notice of service of discovery document; aty Tom High
8/5/2013		DCANO	Reply to Plaintiff's Memorandum in Opposition to State's Motion for Summary Judgment, Thomas B. High, Attorneys for Defendant State of Idaho.
8/12/2013	HRVC	KARLA	Hearing result for Motion for Summary Judgment scheduled on 08/12/2013 04:00 PM: Hearing Vacated
8/20/2013	DISF	KARLA	Disqualification Of Judge - Self
	ORDR	KARLA	Administrative Order of Reference; matter reassigned to Judge Naftz for resolution; /s J Dunn 08/16/13

Ryan M. Mitchell vs. Gerald Durk Simpson, State of Idaho, Bannock County, Susan Simpson

Date	Code	User	Judge
8/27/2013		CAMILLE	Motion to compel against the state of Idaho; aty Briane Nelson for plntf Robert C Naftz
		CAMILLE	Memorandum in support of motion to compel against the state of idaho; aty Briane Nelson for plntf Robert C Naftz
		CAMILLE	Affidavit of Briane Nelson Mitchell in support of motoin to compel discovery against the defendant State of Idah; aty Briane Nelson for plntf Robert C Naftz
9/3/2013		NICOLE	Final Judgment Between Ryan M. Mitchell and Bannock County; it is ordered that Bannock County violated the rights of Ryan Mitchell by failing to give Ryan Mltchell prior notification of criminal proceedings that resulted in the release of Gerald Durk Simpson from State custody and the dismissal of the criminal charge against Gerald Durk Simpson and the opportunity to be present and heard at any of the proceedings; Bannock county is ordered to provide Ryan Mitchell with any notice and an opportunity to be heard any at future proceedings in Bannock County if any arising from Gerald Simpson's shooting of MR. Mitchell; Ryan Mitchell and Bannock County each bear their own costs and fees with respect to each other; s/ J. Naftz 8-30-13 Robert C Naftz
9/16/2013		CAMILLE	Plaintiffs Ryan M Mitchells motion to disqualify for cause pursuant to IRCP 40d2: aty Briane Nelson Mitchell for plntf Robert C Naftz
		CAMILLE	Memorandum in support of plaintiff Ryan M Mitchells Motion to disqualify for cause pursuant to IRCP 40d2: aty Briane Nelson Mitchell for plntf Robert C Naftz
		CAMILLE	Affidavit of Briane Nelson Mitchell in support of plaintiff Ryan Mitchells motion to disqualify for cause pursuant to IRCP 40d2: aty Briane Nelson Mitchell for plntf Robert C Naftz
9/19/2013	ORDR	DCANO	Order Denying Motion to Disqualify: The Court hereby Denies the Plaintiff's Motion to Disqualify Court for Cause. Signed Judge Naftz on 9-19-13. Robert C Naftz
9/23/2013		CAMILLE	Mememorandum in response to plaintiff Ryan M Mitchells motion to disqualify for cause prusuant to IRCP 40d2: aty Thomas High for def State of Idaho Robert C Naftz
10/23/2013	HRSC	NICOLE	Hearing Scheduled (Motion to Compel 11/25/2013 02:30 PM) Plaintiff's motion Robert C Naftz
	HRSC	NICOLE	Hearing Scheduled (Motion for Summary Judgment 11/25/2013 02:30 PM) Defendant's motion (State of Idaho) Robert C Naftz

Ryan M. Mitchell vs. Gerald Durk Simpson, State of Idaho, Bannock County, Susan Simpson

Date	Code	User	Judge
10/23/2013		CAMILLE	Notice of withdrawal of motion for protective order; aty Tom High for def Robert C Naftz
10/25/2013		DCANO	Amended Notice of Hearing: Monday, the 25th day of November 2013 at 2:30 pm for (Defendant, State of Idaho's Motion for Summary Judgment) Robert C Naftz
10/28/2013		CAMILLE	Notice of hearing; set for plaintiffs motion to compel on 11-25-2013 @ 2:30pm: Robert C Naftz
11/18/2013		CAMILLE	Notice of service of discovery documents; aty Tom High for def State of Idaho Robert C Naftz
11/21/2013		CAMILLE	Affidavit of Ryan M Mitchell in support of damage determination; aty Briane Nelson Mitchell for plntf Robert C Naftz
		CAMILLE	Application for entry of damate award in connection with default judgment against defendant Gerald Durk Simpson and defendants Susan Simpson as conservator Guardian for Gerald Durk Simpson: aty Briane Nelson Mitchell forplntf Robert C Naftz
11/25/2013	DCHH	NICOLE	Hearing result for Motion to Compel scheduled on 11/25/2013 02:30 PM: District Court Hearing Held Court Reporter: STEphanie Davis Number of Transcript Pages for this hearing estimated: less than 100 pages Plaintiff's motion Robert C Naftz
	DCHH	NICOLE	Hearing result for Motion for Summary Judgment scheduled on 11/25/2013 02:30 PM: District Court Hearing Held Court Reporter: Stephanie Davis Number of Transcript Pages for this hearing estimated: less than 100 pages Defendant's motion (State of Idaho) Robert C Naftz
	ADVS	NICOLE	Case Taken Under Advisement Robert C Naftz
		CAMILLE	Second Affidavit of Briane Nelson Mitchell in support of motion to compel discovery against the def State of Idaho : aty Briane Nelson Mitchell for plntf Robert C Naftz
		CAMILLE	Response to plaintiffs motion to compel; aty Tom High for def Robert C Naftz
		CAMILLE	Affidavit of Thomas B High in support of Defendant State of Idahos response to plaintiffs motion to compel; aty Tom High for def Robert C Naftz
		CAMILLE	Reply Memorandum in support of motion to compel against the State of Idaho; aty Briane Nelson Mitchell for plntf Robert C Naftz

Ryan M. Mitchell vs. Gerald Durk Simpson, State of Idaho, Bannock County, Susan Simpson

Date	Code	User	Judge
11/26/2013		CAMILLE	Objection to the proposed final monetary judgment against defendants Gerald Durk Simpson and Susan Simpson ass conservator and guardian: aty Tom High for def
11/29/2013		CAMILLE	Monetary Judgment against defendants Gerald Durk Simpson and Susan Simpson as Conservator Guardian of Gerald Durk Simpson: ag defendants Gerald Durk Simpson and Def Susan Simpson as conservator guardian for Gerald Durk Simpson in the amount of \$505,161.90: s/ Judge Naftz 11-29-2013
	JDMT	CAMILLE	Judgment
	CSTS	CAMILLE	Case Status Changed: Closed
12/27/2013		CAMILLE	Memorandum Decision and Order; s/ Judge Naftz 12-23-2013
1/6/2014		CAMILLE	Judgment; court hereby grants Judgment against the plaintiff Ryan Mitchell : s/ Judge Naftz 1-6-2014
2/13/2014		DCANO	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Mauk & Burgoyne Receipt number: 0004789 Dated: 2/14/2014 Amount: \$109.00 (Check) For: Mitchell, Ryan M. (plaintiff)
	APSC	DCANO	Appealed To The Supreme Court
	NOTC	DCANO	Notice of Appeal: William L. Mauk, Attorney for Plaintiff, Ryan M. Mitchell.
	MISC	DCANO	Recieved check # 11875 in the amount of \$100.00 for deposit of Clerk's Record.
2/14/2014	MISC	DCANO	CLERK'S CERTIFICATE OF APPEAL: Signed and Mailed to SC and Counsel on 2-21-14.
2/21/2014	MISC	DCANO	Request for Additional Record (for Supreme Court Appeal) Thomas B. High, Attorney for State of Idaho. Sent Cert. Copies to SC on 2-25-14.
2/28/2014	MISC	DCANO	IDAHO SUPREME COURT; Received Notice of Appeal. Clerk's Record and Reporter's Transcripts Due 5-5-14. (5 weeks prior to Counsel which is 3-31-14) The following Transcripts to be lodged with Dist. Court.: Summary Judgment held 11-25-13
3/5/2014	MISC	DCANO	IDAHO SUPREME COURT; Filed Certified Copy of (Respondent's) Request for additional Record filed in DC 2-21-14.
3/20/2014		DCANO	IDAHO SUPREME COURT; Received Special Deputy Attorney General Appointment of Thomas B. High as Counsel for Respondent State of Idaho.

Ryan M. Mitchell vs. Gerald Durk Simpson, State of Idaho, Bannock County, Susan Simpson

Date	Code	User	Judge
4/1/2014	MISC	DCANO	IDAHO SUPREME COURT; Notice of Transcript Lodged by S. Davis on 4-1-14. Robert C Naftz
	MISC	DCANO	REPORTER'S TRANSCRIPTS received in Court Records on 4-1-14 FOR the following hearing: Dfdt. States of Idaho's MSJ/Pintf's Motion to Compel held 11-25-13. Robert C Naftz
4/22/2014	MISC	DCANO	Clerk's Record received in Court Records on 4-23-14. Robert C Naftz

ORIGINAL

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FILED
BENNETT COUNTY
CLERK
2017 SEP 25 AM 10:07
BY *[Signature]*

STEPHEN S. DUNN

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

RYAN M. MITCHELL,

Plaintiff,

vs.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity, and
BANNOCK COUNTY, IDAHO, a political
subdivision, and DOES 1-25,

Defendants.

Case No. **CV 12- 412 4 OC**

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

COMES NOW The Plaintiff, Ryan Mitchell, and for causes of action against the Defendants, state, allege and aver as follows:

Introduction

1. This is a lawsuit to enforce the rights of a victim of a violent crime and also to insure that the rights of other victims and potential victims are protected.

2. The Idaho Constitution provides that a crime victim, like Plaintiff Ryan Mitchell, has certain rights which include:

COMPLAINT AND DEMAND FOR JURY TRIAL - 1

- (1) To be treated with fairness, respect, dignity and privacy throughout the criminal justice process.
- (2) To timely disposition of the case.
- (3) To prior notification of trial court, appellate and parole proceedings and, upon request, to information about the sentence, incarceration and release of the defendant.
- (4) To be present at all criminal justice proceedings.
- (5) To communicate with the prosecution.
- (6) To be heard, upon request, at all criminal justice proceedings considering a plea of guilty, sentencing, incarceration or release of the defendant, unless manifest injustice would result.
- (7) To restitution, as provided by law, from the person committing the offense that caused the victim's loss.

Idaho Constitution, Article I, Section 22. *See also* I.C. § 19-5306 (further expansion of victim's rights).

Parties

3. Plaintiff Ryan Mitchell was a resident of Pocatello, Idaho on September 27, 2010. At that time, he was employed as an engineer at the Idaho Nuclear Laboratory. Mr. Mitchell currently resides outside of the State of Idaho.

4. Defendant Gerald Durk Simpson was also a resident of Pocatello, Idaho on September 27, 2010. Simpson had been under the care of the State of Idaho for most of his adult life.

5. Defendant State of Idaho, through its Department of Health and Welfare, made a determination that Simpson was severely and persistently mentally ill and took responsibility for him many years ago. The State of Idaho also has responsibility for protecting the public as well as respecting the rights of victims pursuant to the Idaho Constitution and statutory law.

6. Defendant Bannock County and its Prosecuting Attorney's Office had responsibility for not only pursuing criminal and/or civil commitment proceedings against Simpson, but also for protecting the rights of victims like Mr. Mitchell.

7. Defendant Does 1 to 25 are individuals and entities whose identities are not currently known, that participated in or contributed to the breaches and other wrongdoing described in this Complaint.

Jurisdiction

8. This Court has original jurisdiction pursuant to Idaho Code Sections 1-705(1) and 6-914. The Defendants are all subject to the jurisdiction of the Courts of the State of Idaho.

9. Venue is proper in this judicial district pursuant to Idaho Code Section 6-915.

10. Prior to filing this action, notice of the tort claim was provided pursuant to Idaho Code Section 6-901, et seq.

Simpson Attempts to Murder Mr. Mitchell

11. On the night of September 27, 2010, Simpson shot Plaintiff Ryan Mitchell in the back. The bullet entered Mr. Mitchell's back, shattering his ribs, puncturing his lung and barely missing his heart. The shooting occurred at 10:00 p.m. outside of Mocha Madness, a coffee shop located at 546 South 5th Avenue in Pocatello.

12. Mr. Mitchell nearly died that night. He lost 40% of his blood. Dr. Jacob De La Rosa, the cardiothoracic surgeon who treated Mr. Mitchell, initially placed the odds of his survival at 2%. Fortunately, through the efforts of Dr. De La Rosa, the first responders and the medical staff at Portneuf Medical Center, Mr. Mitchell survived.

The State of Idaho Abruptly Ends its Guardianship Relationship With Simpson

13. Prior to the shooting, it appears that the State of Idaho Department of Health and Welfare had taken care of Simpson for most of his adult life. He had lived at State Hospital South and been in and out of halfway houses. For many years, one of Idaho's Assertive Community Treatment ("ACT") teams had responsibility for making sure that Simpson took his medication, had food, stayed out of trouble, and presumably that Simpson was not a danger to himself or others. According to one State report, Simpson had "been unable to manage his medications without the assistance of case managers and/or his family throughout his adult life."

14. The State of Idaho ACT teams have been described as hospitals without walls. ACT teams include licensed medical professionals, social workers and clinicians who can spend as much as 8-16 hours per week with their patient clients. An Idaho law states that ACT teams "provide individualized treatment, rehabilitation and support services to the severely and persistently mentally ill." I.C. § 39-3128(12).

15. During the years that the State of Idaho provided care to Simpson, he had problems with the law. According to Court records, Simpson had two prior misdemeanor convictions and one prior battery charge.

16. After years of caring for Simpson, the State abruptly stopped providing support to him on July 1, 2010. The State did not place Simpson in any other program that would treat his severe and persistent mental illness. The State did not notify Simpson's family, according to Susan Simpson, his sister.

17. It appears that, after July 1, 2010, the State made no effort to determine whether Simpson was taking his medications, buying food, eating regularly, and staying out of trouble. It also appears that the State did nothing to determine whether Simpson had or was using firearms. And, it appears that the State did nothing to determine whether Simpson had become a threat to others after the ACT team stopped providing him with the support he needed to live in a hospital without walls. After years of taking care of Simpson, the State abruptly ended the implied guardianship duties that had prevented Simpson from becoming a threat to others who might find themselves in the vicinity of Simpson.

Bannock County Files Criminal Charges And Then Allows Them To Be Dismissed

18. On September 28, 2010, the Pocatello police quickly determined that Simpson, who lived across the street from Mocha Madness, had shot Mr. Mitchell. Simpson was taken into custody. A search warrant for Simpson's apartment was obtained and the police found one revolver and two rifles in Simpson's apartment. They also found ammunition and two spent cartridges hidden in Simpson's garbage bag.

19. The Bannock County Prosecuting Attorney's Office filed a charge of Aggravated Battery against Simpson (I.C. §§ 18-903(a), 18-907(1)(a) & (b)) with notice that the State would seek an enhancement penalty for the use of a deadly weapon in the commission of a crime (I.C. § 18-2520). The charge stated that Simpson:

[W]as accused of having committed the crime of Aggravated Battery in Bannock County, Idaho on September 27, 2010, [by] willfully and unlawfully using force or violence upon the person of Ryan Mitchell, [by] either the use of a deadly weapon or instrument and/or causing great bodily harm or permanent

disability or permanent disfigurement by shooting Ryan Mitchell in the back.

Bannock County did not file an Attempted Murder charge (I.C. § 18-4015) charge against Simpson even though Mr. Mitchell had almost been killed.

20. A lawyer was appointed for Simpson who, in turn, retained the services of Linda Hatzenbeuhler, Ph.D. Dr. Hatzenbeuhler evaluated Simpson, and she opined that he was too mentally ill to stand trial.

21. However, Dr. Richard Baker from the State Hospital South in Blackfoot, Idaho, filed a report with the Court finding that Simpson was fit to proceed to trial. Simpson was then transported and returned to the Bannock County Jail.

22. Simpson's lawyer objected to Dr. Baker's evaluation. The Bannock County Prosecuting Attorney's Office did not oppose the objection and stipulated to a re-evaluation by Dr. Hatzenbeuhler. Dr. Hatzenbeuhler again said that she believed that Simpson was too mentally ill to stand trial.

23. The Court had a hearing and ordered Simpson held for another 90 days by an Order dated April 17, 2012.

24. On August 30, 2012, the Court dismissed the criminal charges against Simpson, explaining that:

The court has not received a report from anyone at State Hospital South, or on behalf of the State, that contradicts Dr. Hatzenbeuhler's most recent opinion regarding the Defendant's lack of competency and lack fitness to stand trial. The Defendant's commitment has expired and the court has been informed by counsel for the State, counsel for the Defendant, and counsel for State of Idaho, Department of Health and Welfare, that the

Defendant is now the subject of a guardianship and this guardian has had him admitted to a facility for his future care and treatment.

Even though the Court's dismissal order specifically references communications from the State of Idaho, Department of Health and Welfare (presumably through the Office of the Attorney General), there is no record in the Court's file as to what form those secret communications took, and when the State of Idaho intervened in the criminal case to assist Simpson.

25. Prior to the criminal charges being dismissed, Mr. Mitchell was not provided with the Constitutionally and statutorily required notice. Mr. Mitchell was not told that Bannock County did not intend to present evidence from Dr. Baker, who had previously found Simpson mentally fit to stand trial. Moreover, Mr. Mitchell was not told that Bannock County did not intend to introduce any evidence in response to the opinion given by one psychologist who was working for Simpson's lawyer. In addition, Mr. Mitchell has not been told if Bannock County intends to ever re-file criminal charges against Simpson. Mr. Mitchell has also never been told by Bannock County whether or if it intends to pursue civil commitment proceedings against Simpson pursuant to Idaho Code Section 66-329 (mentally ill and likely to injure others). And, Mr. Mitchell has not been informed whether Bannock County has ever bothered to take steps under Idaho Code Section 66-356 to prevent Simpson from acquiring guns and ammunition.

26. Mr. Mitchell was not given an opportunity to participate in the court proceedings that led to the dismissal of the criminal charges against Simpson. Moreover, to the extent that the Bannock County Prosecuting Attorney's Office has participated in a plan that has (or will) lead to the release of Simpson, Mr. Mitchell was not provided with notice, or an opportunity to be heard or participate.

COMPLAINT AND DEMAND FOR JURY TRIAL - 7

The State of Idaho Attorney General's Office Secret Plan to Release Simpson

27. Starting in May 2012, the State of Idaho Attorney General initiated a Court proceeding in Bingham County that could lead to (or may have already resulted in) the release of Simpson. On May 3, 2012, the State of Idaho Attorney General filed a Petition for Appointment of Guardian/Conservator seeking to have Susan Simpson appointed as Simpson's Guardian and Conservator. The Bannock County Prosecuting Attorney's Office was informed of the Bingham County action, although it is unclear as to what role Bannock County played in those proceedings.

28. On June 5, 2012, a Report was submitted to the Bingham County Court that stated:

All that is holding [Simpson] at State Hospital South is the legal issue, otherwise, he would be an easy discharge to an assisted living-type setting at this time.

The "legal issue" presumably referred to the criminal charge that was still pending against Simpson because he had shot and almost killed Mr. Mitchell on September 27, 2010.

29. On June 7, 2012, the State of Idaho's Petition was approved by the Bingham County Court. One month later, on July 9, 2012, a report was filed with the Court by Simpson's Guardian, Susan Simpson. This report stated that "the plan is to move [Simpson] to a group home." The report also stated that Simpson was "in good spirits" about the plan to be released from State Hospital South and move to a group home. At this time, the Court records do not indicate whether or not Simpson has been released.

30. The State of Idaho Attorney General's Office has refused to indicate whether Simpson has been released. In addition, the State of Idaho has refused to indicate whether it has or will pursue civil commitment proceedings against Simpson pursuant to Idaho Code Section 66-329 (mentally ill and likely to injure others). The State of Idaho has also refused to disclose where Simpson is presently located. And, Mr. Mitchell has not been informed whether the State of Idaho, as it is required to do by Idaho Code Section 66-356, has taken steps to prevent Simpson from acquiring more guns and ammunition.

31. The State of Idaho Attorney General's Office did not provide the Constitutionally and statutorily required notice to Mr. Mitchell before undertaking the Guardian/Conservator proceedings on Simpson's behalf. The State of Idaho did not notify Mr. Mitchell that the court proceeding that it initiated could lead to (or already resulted in) the release of Simpson. The State of Idaho did not provide Mr. Mitchell with the opportunity to be heard at the Bingham County Court proceeding. On the contrary, the State of Idaho Attorney General's Office has indicated that Simpson's interests are more important than the rights of Mr. Mitchell as a crime victim. Indeed, at every single opportunity, the State of Idaho Attorney General's Office has deliberately chosen to ignore Mr. Mitchell's rights that are guaranteed by Idaho Constitution, Article I, Section 22 and Idaho Code Section 19-5306.

First Cause of Action

Declaratory Judgment Involving Constitutional and Statutory Rights Violations

(State of Idaho, Bannock County and Does 1-4)

32. Mr. Mitchell repeats and realleges all of the preceding and subsequent paragraphs in this Complaint.

33. Mr. Mitchell seeks declaratory judgment pursuant to Idaho Code § 10-1201, et seq., declaring that the State of Idaho, Bannock County and Does 1-4 violated his rights under the Idaho Constitution, Article I, Section 22 and Idaho Code Section 19-5306.

34. Mr. Mitchell's rights as a victim of a violent crime have been violated by the actions of the State of Idaho and the Bannock County Prosecuting Attorney's Office in two separate court proceedings. Among other things, Mr. Mitchell was not given prior notice that the charges against Simpson might be dismissed, that the Prosecuting Attorney's Office would not bother to ask Dr. Baker or anyone else at State Hospital South to provide an opinion, that the Prosecuting Attorney's Office would not object to Dr. Hatzenbeuhler's opinion that had been obtained by Simpson's lawyer, or that the State of Idaho Attorney General's Office would initiate a Guardianship/Conservatorship proceeding for Simpson that would lead to (or has already resulted in) his release.

35. In addition, the Bannock County Prosecuting Attorney's Office has not told Mr. Mitchell whether they have any plans to re-file charges against Simpson, or any plans to see that he is and remains civilly committed in a secure state hospital. At the same time, the State of Idaho has refused to tell Mr. Mitchell anything about the location of Simpson and whether the

State intends to release (or has released) Simpson from its custody. Neither the State of Idaho nor the Bannock County Prosecuting Attorney's Office have notified Mr. Mitchell whether they have or will take the necessary steps to prevent Simpson from obtaining guns or ammunition pursuant to Idaho Code Section 66-356.

36. An actual controversy has arisen and now exists between Mr. Mitchell and Bannock County and the State of Idaho concerning Mr. Mitchell's rights as the victim of a violent crime, and the duties of Bannock County and the State of Idaho under Idaho Constitution, Article I, Section 22 and Idaho Code Section 19-3506. In particular, whether Bannock County and the State of Idaho violated those rights by, among other things, failing:

- To treat Mr. Mitchell with fairness, respect, and dignity.
- To give Mr. Mitchell prior notification of proceedings that could lead to Simpson's release.
- To provide Mr. Mitchell an opportunity to be present and heard at any proceeding that may affect Simpson's release.
- To inform Mr. Mitchell of any secret reports that were created to support the dismissal of the criminal charges or the planned release of Simpson.
- To inform Mr. Mitchell of any secret deals or understandings that had been reached relating to the dismissal of the criminal charges or the planned release of Simpson.

Second Cause of Action

Injunctive Relief Involving Constitutional and Statutory Rights Violations

(State of Idaho, County of Bannock and Does 5-8)

37. Mr. Mitchell repeats and realleges all of the preceding and subsequent paragraphs in this Complaint.

COMPLAINT AND DEMAND FOR JURY TRIAL - 11

38. Mr. Mitchell has suffered irreparable injuries because the State of Idaho, Bannock County and Does 5-8 violated his rights as a crime victim as guaranteed by Idaho Constitution Article I, Section 22 and Idaho Code Section 19-5306.

39. Mr. Mitchell does not have an adequate remedy at law for the violation of his Constitutional and statutory rights, and, as a result, equitable relief in the form of an injunction is appropriate. The Court should enter a preliminary and permanent injunction that will require the State of Idaho and Bannock County, as well as their officers, agents, servants, employees, and attorneys, and anyone in active concert or participation with them:

- To treat Mr. Mitchell with fairness, respect, and dignity.
- To give Mr. Mitchell prior notification of proceedings that could lead to Simpson's release.
- To provide Mr. Mitchell an opportunity to be present and heard at any proceeding that may affect Simpson's release.
- To inform Mr. Mitchell of any secret reports that were created to support the dismissal of the criminal charges or the planned release of Simpson.
- To inform Mr. Mitchell of any secret deals or understandings that had been reached relating to the dismissal of the criminal charges or the planned release of Simpson.

Third Cause of Action

Assault and Battery

(Simpson and Does 9-12)

40. Mr. Mitchell repeats and realleges all of the preceding and subsequent paragraphs of this Complaint.

COMPLAINT AND DEMAND FOR JURY TRIAL - 12

41. Simpson used deadly force in shooting Mr. Mitchell in the back on the evening of September 27, 2010. The bullet broke several ribs, punctured a lung resulting in its collapse, and barely missed Mr. Mitchell's heart.

42. Simpson and Does 9-12 are responsible for all of the injuries resulting from Simpson's shooting of Mr. Mitchell. Mr. Mitchell seeks an award of damages in compensation for his injuries. These injuries have included medical expenses in excess of \$100,000, permanent disfigurement and scarring to Mr. Mitchell's body, permanent muscle and nerve damage, lost time and work caused by the need for medical treatment and physical rehabilitation, emotional trauma, and pain and suffering.

43. As a proximate cause of the assault and battery, Mr. Mitchell has sustained and will sustain economic and compensatory losses that will be more fully described at trial.

Fourth Cause of Action

Negligence

(Simpson and Does 13-16)

44. Mr. Mitchell repeats and realleges all of the preceding and subsequent paragraphs of this Complaint.

45. Simpson and Does 13-16 owed a duty not to cause injury to others, regardless of whether it was caused by an intentional act, or his failure to act in a reasonable manner.

46. Simpson and Does 13-16 violated that duty when Simpson shot and injured Mr. Mitchell. Mr. Mitchell's injuries have included medical expenses in excess of \$100,000, permanent disfigurement and scarring to Mr. Mitchell's body, permanent muscle and nerve

damage, lost time and work caused by the need for medical treatment and physical rehabilitation, emotional trauma, and pain and suffering.

47. As a proximate cause of Simpson's negligence, Mr. Mitchell has sustained and will sustain economic and compensatory losses that will be more fully described at trial.

Fifth Cause of Action

Negligence/Gross Negligence/Reckless/Willful

(State of Idaho and Does 17-25)

48. Mr. Mitchell repeats and realleges all of the preceding and subsequent paragraphs of this Complaint.

49. The State of Idaho assumed responsibility for Simpson many years ago. Simpson lived at State Hospital South and, prior to July 1, 2010, he was in the State's hospital without walls program - - ACT. It appears that the State of Idaho had assumed a guardianship or special relationship over Simpson, although the exact nature of the relationship remains hidden in the State's secret files.

50. As part of its duties the State monitored Simpson's daily behavior, insuring that he was provided with and took his medication, and that Simpson was not a danger to himself or others. The State carried out these duties and obligations for most of Simpson's adult life, according to some reports. Then, suddenly, on July 1, 2010, the State breached and abandoned its duties and obligations to monitor Simpson's daily life, keep him on his medications and insure that Simpson did not become a threat to himself or others.

51. The State not only breached duties to Simpson, but of even great importance, breached its obligations to people, like Mr. Mitchell, who might encounter Simpson after the State had abandoned him and its special relationship/guardianship.

52. The State has refused to provide details concerning its decision to abandon Simpson, the State's failure to place Simpson in another program, or to do any follow-up or monitoring after July 1, 2010. This information is presumably contained in the State's secret files. As a result, it is alleged, based upon information and belief, that the State acted with a sufficient degree of negligence, gross negligence, recklessness and/or willfulness to support an action under the Idaho Tort Claims Act. That is, the State acted negligently, recklessly and or willfully when it stopped supervising Simpson which allowed him to become a danger to whomever he might encounter.

53. As a direct and proximate cause of the State of Idaho's negligence, gross negligence, recklessness and/or willfulness, Simpsons used deadly force and shot Mr. Mitchell in the back on the evening of September 27, 2010. The bullet broke several ribs, punctured a lung resulting in its collapse, and barely missed Mr. Mitchell's heart.

54. The State of Idaho and Does 17-25 are responsible for all of the injuries resulting from Simpson's shooting of Mr. Mitchell. Mr. Mitchell seeks an award of damages in compensation for his injuries. These injuries have included medical expenses in excess of \$100,000, permanent disfigurement and scarring to Mr. Mitchell's body, permanent muscle and nerve damage, lost time and work caused by the need for medical treatment and physical rehabilitation, emotional trauma, and pain and suffering.

55. Mr. Mitchell has sustained and will sustain economic and compensatory losses that will be more fully described at trial.

Prayer For Relief

Based upon the foregoing allegations, Mr. Mitchell requests the following relief:

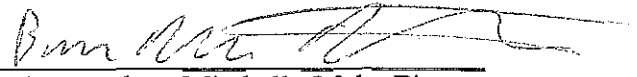
- (1) Issuance of an order and judgment declaring that Bannock County and the State of Idaho violated his Constitutional and statutory rights as a crime victim.
- (2) Issuance of a preliminary and permanent order and judgment that will enjoin and restrain Bannock County and the State of Idaho, their officers, agents, servants, employees, and attorneys, as well as anyone else with notice and who is in active concert and participation with them from violating Mr. Mitchell's Constitutional and statutory rights as a crime victim, and further requiring prior notification to Mr. Mitchell of any proceeding or other actions that may or could lead to the release of Simpson from incarceration or confinement.
- (3) Damages in an amount that will fully compensate Mr. Mitchell for all of his injuries, and in an amount in excess of \$100,000 which will be shown at trial.
- (4) An award of attorney's fees incurred in pursuing this matter.
- (5) For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs request a jury trial by a jury of twelve persons on all counts, claims and causes of action triable by jury, pursuant to Rule 38 of the Idaho Rules of Civil Procedure.

DATED this 24th day of September, 2012.

MAUK & BURGOYNE

By: 
Briane Nelson Mitchell, Of the Firm
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FILED
BANNOCK COUNTY
CLERK OF THE COURT
13 JAN 31 PM 3:06
BY CW
DEPUTY

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

RYAN M. MITCHELL,

Plaintiff,

vs.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity, and
BANNOCK COUNTY, IDAHO, a political
subdivision, SUSAN SIMPSON, as
Conservator and Guardian of Gerald Durk
Simpson, and DOES 1-25,

Defendants.

Case No. CV 12-4124 OC

**FIRST AMENDED COMPLAINT
AND DEMAND
FOR JURY TRIAL**

COMES NOW The Plaintiff, Ryan Mitchell, and for causes of action against the
Defendants, state, allege and aver as follows:

Introduction

1. This is a lawsuit to enforce the rights of a victim of a violent crime and also to insure that the rights of other victims and potential victims are protected. On September 27, 2010, Defendant Gerald Durk Simpson shot and almost killed Mr. Mitchell. Without notifying

FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL - 1

Mr. Mitchell or giving him an opportunity to be heard, the Defendant State of Idaho, working with the Defendant Bannock County Prosecuting Attorney's Office, arranged to have Simpson released and the charges dismissed so that Simpson would not stand trial for the attempted murder of Mr. Mitchell. In addition, there is no indication that the State of Idaho or Bannock County took steps to protect Mr. Mitchell or the public by preventing Simpson from acquiring guns and ammunition, by requiring that Simpson receive treatment, or by maintaining custodial control over Simpson.

2. The Idaho Constitution provides that a crime victim, like Mr. Mitchell, has certain rights which include:

- (1) To be treated with fairness, respect, dignity and privacy throughout the criminal justice process.
- (2) To timely disposition of the case.
- (3) To prior notification of trial court, appellate and parole proceedings and, upon request, to information about the sentence, incarceration and release of the defendant.
- (4) To be present at all criminal justice proceedings.
- (5) To communicate with the prosecution.
- (6) To be heard, upon request, at all criminal justice proceedings considering a plea of guilty, sentencing, incarceration or release of the defendant, unless manifest injustice would result.
- (7) To restitution, as provided by law, from the person committing the offense that caused the victim's loss.

Idaho Constitution, Article I, Section 22. *See also* I.C. § 19-5306 (further expansion of victim's rights).

Parties

3. Plaintiff Ryan Mitchell ("Mr. Mitchell") was a resident of Pocatello, Idaho on September 27, 2010. At that time, he was employed as an engineer at the Idaho Nuclear

Laboratory. Mr. Mitchell currently resides in the State of Nebraska, but returns frequently to the State of Idaho.

4. Defendant Gerald Durk Simpson ("Simpson") was also a resident of Pocatello, Idaho on September 27, 2010. Simpson had been under the care of the State of Idaho for most of his adult life. Based upon information and belief, it is alleged that Simpson currently resides in either Bannock or Bingham County, Idaho.

5. Defendant State of Idaho, through its Department of Health and Welfare, made a determination that Simpson was severely and persistently mentally ill and took responsibility for him many years ago. The State of Idaho also has responsibility for protecting the public as well as respecting the rights of crime victims pursuant to the Idaho Constitution and statutory law. The Idaho State Attorney General's Office places a special emphasis on its avowed interest in protecting the rights of crime victims, like Mr. Mitchell. The Attorney General's website states that each victim of a criminal offense shall be:

- Treated with fairness, respect, dignity and privacy throughout the criminal justice process
- Permitted to be present at all court proceedings
- Entitled to a timely disposition of the case
- Given prior notification of proceedings and, upon request, given information about the sentence, incarceration, placing on probation or release of the defendant
- Heard, upon request, at all criminal justice proceedings considering a plea of guilty, sentencing, incarceration, placing on probation or release of the defendant
- Afforded the opportunity to provide a victim impact statement
- Notified whenever the defendant or suspect is released or escapes from custody

6. Defendant Bannock County and its Prosecuting Attorney's Office had responsibility for not only pursuing criminal and/or civil commitment proceedings against Simpson, but also for protecting and respecting the rights of crime victims like Mr. Mitchell.

7. Defendant Susan Simpson ("Ms. Simpson") is the Court-appointed Conservator and Guardian of her brother, Defendant Gerald Durk Simpson. She is named in this lawsuit in that capacity. She resides outside of Idaho in Palo Alto, California, but has consented to Idaho jurisdiction by virtue of her appointment as Simpson's Conservator and Guardian.

8. Defendant Does 1 to 25 are individuals and entities whose identities are not currently known, that participated in or contributed to the breaches and other wrongdoing described in this Complaint.

Jurisdiction

9. This Court has original jurisdiction pursuant to Idaho Code Sections 1-705(1) and 6-914. The Defendants are all subject to the jurisdiction of the Courts of the State of Idaho.

10. Venue is proper in this judicial district pursuant to Idaho Code Section 6-915.

11. Prior to filing this action, notice of the tort claim was provided pursuant to Idaho Code Section 6-901, et seq.

Simpson Attempts to Murder Mr. Mitchell

12. On the night of September 27, 2010, Simpson shot Mr. Mitchell in the back. The bullet entered Mr. Mitchell's back, shattering his ribs, puncturing his lung and barely missing his heart. The shooting occurred around 10:00 p.m. outside of Mocha Madness, a coffee shop located at 546 South Fifth Avenue in Pocatello, near the Idaho State University campus.

13. Mr. Mitchell nearly died that night. He lost 40% of the blood in his body. Dr. Jacob De La Rosa, the cardiothoracic surgeon who treated Mr. Mitchell, initially placed the odds of his survival at 2%. Fortunately, through the efforts of Dr. De La Rosa, the first responders and the medical staff at Portneuf Medical Center, Mr. Mitchell survived.

14. After shooting Mr. Mitchell, Simpson returned to his apartment and closed his door. Simpson removed the two spent shell casings from his revolver and hid them in the trash bag in his kitchen. Simpson cleaned his revolver, and placed a heavy coat of oil on it. Simpson then reloaded the revolver with fresh cartridges and placed it in the top drawer of his dresser.

The State of Idaho Abruptly Ends its Guardianship Relationship With Simpson

15. Simpson has a longstanding mental disease and disorder. His primary diagnosis is Paranoid Schizophrenic Psychotic Disorder. The State of Idaho Department of Health and Welfare has taken care of Simpson for most of his adult life. He has lived at State Hospital South in Blackfoot and halfway houses. For many years, one of Idaho's Assertive Community Treatment ("ACT") teams had responsibility for making sure that Simpson took his medication, stayed out of trouble, and presumably that Simpson was not a danger to himself or others. According to one State report, Simpson had "been unable to manage his medications without the assistance of case managers and/or his family throughout his adult life." In addition to his mental problems, according to Court records, Simpson has had two misdemeanor convictions and one battery charge.

16. The State of Idaho ACT teams have been described as hospitals without walls. ACT teams include licensed medical professionals, social workers and clinicians who spend as much as 8-16 hours per week with their patient clients. An Idaho law states that ACT teams

function to “provide individualized treatment, rehabilitation and support services to the severely and persistently mentally ill.” I.C. § 39-3128(12).

17. The State has exclusive control and possession of the files and records relating to its treatment and care of Simpson. The State has, however, released selected information to the press and public. Plaintiff is informed and believes, and upon such information and belief alleges that after years of caring for Simpson, the State stopped providing support to him on or around July 1, 2010. The State did not place Simpson in any other program that would treat his Paranoid Schizophrenic Psychotic Disorder. The State did not notify Simpson’s family, according to Ms. Simpson, his sister, and Court-appointed Conservator and Guardian. There is no public record that the State did anything to insure that Simpson would take his medication that the State knew he had “been unable” to manage throughout his adult life. Furthermore, there is no public record that the State had done anything to prevent Simpson from owning or using guns. After years of caring for Simpson, the State abruptly ended its custodial and guardianship duties that had prevented Simpson from becoming a threat to Mr. Mitchell or anyone who found themselves in Simpson’s vicinity.

Pocatello Police Arrest Simpson

18. On September 28, 2010, the next day after the shooting, the Pocatello Police quickly determined that Simpson, who lived across the street from Mocha Madness, had shot Mr. Mitchell. Simpson was immediately taken into custody, based upon the officers’ determination that Simpson was a danger to himself and others. The Pocatello Police called the State of Idaho Adult Mental Health Center in Pocatello, which is part of the Idaho State Department of Health and Welfare. A psychologist and social worker from the State Department of Health and

Welfare eventually returned the call from the Pocatello Police but refused to provide any information or assistance. Instead, the State of Idaho told the Pocatello Police that “without an Order from a Judge, they could not discuss Simpson’s medical condition.”

19. The State of Idaho has exclusive control and possession of the files and records relating to its response to the news that Simpson had shot Mr. Mitchell. Nevertheless, Plaintiff is informed and believes, and upon such information and belief alleges that after the shooting, the Idaho State’s Health and Welfare Department immediately became concerned about its responsibility and complicity for Simpson’s actions. On September 28, 2010, the next day after the almost fatal shooting, one of the Health and Welfare Department Doctors prepared an internal State report about the incident that reads as if the State Doctor was attempting to justify Simpson’s possession and use of guns: “Further, xxxx carrying of a firearm in public is not inconsistent with the nature of rural townships where hunting and recreational sportsmanship is a generally accepted practice.” (The Report deleted what appears to be Simpson’s name.)

20. Plaintiff is informed and believes, and upon such information and belief alleges that the Idaho State Health and Welfare Department made efforts to restrict and manage information being released to the public and the press. One Health and Welfare official reported that Simpson’s computer file disappeared from her computer screen as she was reading it on October 1, 2010. Another Health and Welfare official warned the State’s “managers of the importance of operating according to the proper flow of information.” A day or two after Simpson had almost killed Mr. Mitchell, and at the same time that they were refusing to talk with the Pocatello Police, those same Health and Welfare Department officials reached out and called

Simpson's sister in California. Ms. Simpson was surprised to learn that the State of Idaho had stopped its treatment and care of her brother.

21. The Pocatello Police proceeded with their investigation without help from the State Department of Health and Welfare. On September 28, 2010, the Pocatello police prepared an affidavit and obtained a warrant to search Simpson's apartment. The police found three guns: 1) an IJ Target 22 caliber revolver; 2) a Winchester Model 67A rifle; and 3) a Connecticut Valley Arms 50 caliber rifle. The police also found ammunition, two different types of gun powder, and the spent shell cartridges that Simpson had hidden in his apartment.

22. Even though the State of Idaho Department of Health and Welfare would not assist the Pocatello Police, it has released some information to the press and public in which it tried to shift the blame for its actions to generic budget cuts. At the same time, the State has steadfastly refused to disclose information relating to its care and treatment of Simpson prior to July 1, 2010, its knowledge of his ownership of guns, its knowledge of Simpson's propensity for violence, and its decision to abruptly stop providing care and treatment to Simpson on around July 1, 2010. As a result, and until the State discloses its files and records, it is not possible to know the full extent of the State's knowledge regarding Simpson's tendencies toward violence, Simpson's purchase and use of guns, and the risk of violence that Simpson posed to himself and others. Nevertheless, the State has acknowledged that Simpson had Paranoid Schizophrenic Disorder, was not medically compliant (i.e., would not take his medications), and was incapable of taking care of himself.

Bannock County Pursues Criminal Charges Against Simpson

23. The Bannock County Prosecuting Attorney's Office filed a charge of Aggravated Battery against Simpson (I.C. §§ 18-903(a), 18-907(1)(a) & (b)) with notice that the State would seek an enhancement penalty for the use of a deadly weapon in the commission of a crime (I.C. § 18-2520). The charge stated that Simpson:

[W]as accused of having committed the crime of Aggravated Battery in Bannock County, Idaho on September 27, 2010, [by] willfully and unlawfully using force or violence upon the person of Ryan Mitchell, [by] either the use of a deadly weapon or instrument and/or causing great bodily harm or permanent disability or permanent disfigurement by shooting Ryan Mitchell in the back.

Bannock County did not file an Attempted Murder charge (I.C. § 18-4015) against Simpson even though Mr. Mitchell had almost been killed.

24. A lawyer was appointed for Simpson who, in turn, hired Linda Hatzenbeuhler, Ph.D. Dr. Hatzenbeuhler evaluated Simpson, and she reported that she believed that Simpson was mentally ill and should not stand trial. Following Dr. Hatzenbeuhler's report, the Bannock County Court ordered the commitment of Simpson to the custody of the Idaho State Health and Welfare Department pursuant to Idaho Code § 18-212.

25. More than one year after the shooting, Dr. Richard Baker from the State Hospital South in Blackfoot, Idaho, evaluated Simpson and filed a report with the Bannock County Court finding that Simpson was mentally fit and should proceed to trial. Simpson was then transported and returned to the Bannock County Jail, and the Bannock County Court set the case for a preliminary hearing.

26. Simpson's lawyer objected to Dr. Baker's evaluation. The Bannock County Prosecuting Attorney's Office did not oppose the objection and stipulated to a second evaluation by the psychologist who had been hired by, and was working with, Simpson's lawyer. That psychologist again said that she believed that Simpson was mentally ill and should not stand trial.

27. On April 11, 2012, the Bannock County Court held a competency hearing. In an Order issued after that hearing, on April 17, 2012, the Court found that Simpson lacked "the fitness to proceed in that he cannot assist his defense" and that he also lacked "the capacity to make informed decisions about treatment." The Court's Order went on to provide:

That [Simpson] is committed to the custody of the Director of the Idaho Department of Health and Welfare pursuant to Idaho Code §18-212 for care and treatment at an appropriate facility of the Department of Health and Welfare. Thereafter the Department shall file reports every ninety (90) days until further ordered.

* * *

That an evaluation of the defendant's mental condition be performed at the time of defendant's admission to said facility and that a progress report be prepared on the defendant's mental condition. This progress report shall include an opinion as to whether the defendant is fit to proceed, or if not, whether or not there is a substantial probability the defendant will be fit to proceed within the foreseeable future.

If at any time the director of the facility to which the defendant is committed determines that the defendant is fit to proceed, such determination shall be reported to the Court.

28. There is no indication in the Court file that the Idaho State Department of Health and Welfare complied with the Bannock County Court's April 17, 2012 Order. That is, no progress report on Simpson's medical condition could be located in the Bannock County Court

record. In addition, no report concerning Simpson's fitness to proceed from the State Department of Health and Welfare could be located in the Court's record.

The State of Idaho's Secret Plan to Release Simpson

29. The State of Idaho Attorney General initiated a Court proceeding in Bingham County for the purpose of obtaining the release of Simpson. On May 3, 2012, the State of Idaho filed a Petition for Appointment of Guardian/Conservator seeking to have Susan Simpson appointed as Simpson's Guardian and Conservator. The Bannock County Prosecuting Attorney's Office was informed of the Bingham County action, although no one notified Mr. Mitchell.

30. On June 5, 2012, a Report was submitted to the Bingham County Court that stated:

All that is holding [Simpson] at State Hospital South is the legal issue, otherwise, he would be an easy discharge to an assisted living-type setting at this time.

The "legal issue" presumably referred to the aggravated assault charge that was still pending against Simpson because he had shot and almost killed Mr. Mitchell on September 27, 2010.

31. On June 7, 2012, the State of Idaho Attorney General's Petition was approved by the Bingham County Court. One month later, on July 9, 2012, a report was filed with the Bingham County Court by Simpson's Guardian, Susan Simpson. This report stated that "the plan is to move [Simpson] to a group home." The report also stated that Simpson was "in good spirits" about the plan to be released from State Hospital South and moved to a group home.

32. The State of Idaho went to extraordinary lengths to facilitate the release of Simpson, and even the dismissal of the criminal charges against him. The State prepared the

Court papers and initiated the Court proceedings in Bingham County. The State contacted the Bannock County Prosecuting Attorney's Office about having the criminal charges against Simpson dismissed. The State even advised Ms. Simpson about the availability of public funds to facilitate her travel and expenses incurred in arranging the release of her brother.

Dismissal of the Criminal Charges Against Simpson

33. On August 30, 2012, the Bannock County Court dismissed the criminal charges against Simpson, explaining that:

The court has not received a report from anyone at State Hospital South, or on behalf of the State, that contradicts [the doctor hired by Simpson's lawyer] most recent opinion regarding the Defendant's lack of competency and lack fitness to stand trial. The Defendant's commitment has expired and the court has been informed by counsel for the State, counsel for the Defendant, and counsel for State of Idaho, Department of Health and Welfare, that the Defendant is now the subject of a guardianship and this guardian has had him admitted to a facility for his future care and treatment.

Even though the Court's dismissal order specifically references communications from the Idaho State Department of Health and Welfare (presumably through the Office of the Attorney General), there is no record in the Court's file as to what form those communications took, and the date when the State of Idaho intervened and appeared in the criminal case to assist Simpson. There are also no references to any further evaluations or reports by Dr. Baker, or any other doctor who had treated Simpson at State Hospital South.

**Lack of Concern for Victim's Rights and the Interests of the Public
by the State of Idaho and Bannock County**

34. Based upon the records that have been released, it does not appear that either the State of Idaho or Bannock County made an effort to prevent Simpson from acquiring guns. That

is, there is no indication that either the State of Idaho in the Bingham County proceeding, or the Bannock County Prosecuting Attorney's Office in the Bannock County Court proceeding, attempted to have either Court make a finding under Idaho Code § 66-356(1)(f) that Simpson was the type of person to whom the firearm restrictions of 18 U.S.C. §§ 922(d)(4) and (g)(4) apply.

35. Both the State of Idaho and the Bannock County Prosecuting Attorney's Office have refused to provide Mr. Mitchell or his representatives with information concerning Simpson's current location. As a result, Mr. Mitchell alleges, based upon information and belief that Simpson has been released from custody and that may have occurred even before the criminal charges were dismissed on August 20, 2012. Neither the State of Idaho nor the Bannock County Prosecutor's Office have ever told Mr. Mitchell or his representatives how they decided that Simpson was not a threat to himself or other people in the community even though he had shot and almost killed Mr. Mitchell. Neither the State of Idaho nor the Bannock County Prosecutor's Office have ever told Mr. Mitchell or his representatives whether they have returned the guns and ammunition to Simpson that were confiscated by the Pocatello Police at the time of Simpson's arrest. Neither the State of Idaho nor the Bannock County Prosecuting Attorney's Office have ever told Mr. Mitchell or his representatives how they decided that Mr. Simpson was supposedly not sane enough to stand trial for attempted murder but sane enough to be returned to the community as a free person, without restriction on his ability to acquire guns or ammunition.

36. The Bannock County Prosecuting Attorney's Office did not give Mr. Mitchell prior notice and an opportunity to be heard and participate at the trial court proceedings that

ultimately led to the dismissal of the criminal charges and apparent release of Simpson. This included, but was not limited to:

- Bannock County Prosecuting Attorney Office's stipulation to rely only upon the psychologist hired by Simpson's lawyer.
- Bannock County Prosecuting Attorney Office's refusal to introduce further evidence from Dr. Baker, who believed that Simpson was sane enough to stand trial.
- Bannock County Prosecuting Attorney Office's refusal to oppose the dismissal of the criminal charges against Simpson.
- Bannock County Prosecuting Attorney Office's refusal to oppose the release of Simpson.
- Bannock County Prosecuting Attorney Office's unwillingness to ask the Court for an Order pursuant to Idaho Code Section 66-356, to prevent Simpson from acquiring guns and ammunition.
- Bannock County Prosecuting Attorney Office's refusal to seek civil commitment of Simpson pursuant to Idaho Code Section 66-329.
- Bannock County Prosecuting Attorney Office's participation in the secret communications to the Bannock County Court in and around July and August of 2012.

37. The State of Idaho did not give Mr. Mitchell prior notice and an opportunity to be heard at any of the Bingham County Court proceedings that have led to the dismissal of charges and the apparent release of Simpson. This has included, but is not limited to, the fact that Mr. Mitchell was never told that:

- The State of Idaho filed the Bingham County Court action for the purpose of obtaining Simpson's release from custody.
- The State of Idaho filed the Bingham County Court action for the purpose of obtaining the dismissal of the criminal charges against Simpson.
- The State of Idaho was representing Simpson's interests.

- The State of Idaho had no interest in giving Mr. Mitchell an opportunity to participate or be heard in the Bingham County Court action.
- The State of Idaho would not seek a Court Order that would prevent Simpson from acquiring guns and ammunition.
- The State of Idaho was appearing and providing secret reports in the Bannock County Court criminal proceeding.
- The State of Idaho was working with Simpson's sister to obtain his release and dismissal of the criminal charges.

First Cause of Action

Declaratory Judgment Involving Constitutional and Statutory Rights Violations

(State of Idaho, Bannock County and Does 1-4)

38. Mr. Mitchell repeats and realleges all of the preceding and subsequent paragraphs in this Complaint.

39. Mr. Mitchell seeks declaratory judgment pursuant to Idaho Code § 10-1201, et seq., declaring that the State of Idaho, Bannock County and Does 1-4 violated his rights under the Idaho Constitution, Article I, Section 22 and Idaho Code Section 19-5306.

40. Mr. Mitchell's rights as a victim of a violent crime have been violated by the actions of the State of Idaho and the Bannock County Prosecuting Attorney's Office. In fact, in two separate court proceedings, the State of Idaho and Bannock County have ignored their obligations and duties under the Idaho Constitution, Article I, Section 22 and Idaho Code Section 19-5306.

41. An actual controversy has arisen and now exists between Mr. Mitchell and Bannock County and the State of Idaho concerning Mr. Mitchell's rights as the victim of a

violent crime, and the duties of Bannock County and the State of Idaho under Idaho Constitution, Article I, Section 22 and Idaho Code Section 19-3506. In particular, whether Bannock County and the State of Idaho violated those rights by, among other things, failing to:

- a. Give Mr. Mitchell prior notification of all of the proceedings that could lead to Simpson's release.
- b. Provide Mr. Mitchell an opportunity to be present and heard at any proceeding that may affect Simpson's release.
- c. Inform Mr. Mitchell of any reports that were created to support the dismissal of the criminal charges or the release of Simpson.
- d. Inform Mr. Mitchell of any plans, deals or understandings that had been reached relating to the dismissal of the criminal charges or the planned release of Simpson.
- e. Treat Mr. Mitchell with fairness, respect, and dignity.

Second Cause of Action

Injunctive Relief Involving Constitutional and Statutory Rights Violations

(State of Idaho, County of Bannock and Does 5-8)

42. Mr. Mitchell repeats and realleges all of the preceding and subsequent paragraphs in this Complaint.

43. Mr. Mitchell has suffered irreparable injuries because the State of Idaho, Bannock County and Does 5-8 violated his rights as a crime victim as guaranteed by Idaho Constitution Article I, Section 22 and Idaho Code Section 19-5306. There is a likelihood of future injuries and violations given the fact that the statute of limitations for assault or attempted murder is five years. Mr. Mitchell and the public have also suffered and will continue to suffer irreparable injuries because the State of Idaho, Bannock County and Does 5-8 did not obtain a Court Order

that would prevent Simpson from acquiring guns or ammunition. In addition, Mr. Mitchell has suffered and will continue to suffer irreparable injuries because neither the State of Idaho, Bannock County nor Does 5-8 have provided information relating to the whereabouts or release of Simpson. And, Mr. Mitchell and the public have suffered and will continue to suffer irreparable injuries because the State of Idaho, Bannock County and Does 5-8 have neither provided notice or evidence of any type of a plan to make sure that Simpson does not become a threat to Mr. Mitchell, or members of the public, in the future.

44. Mr. Mitchell does not have an adequate remedy at law for the violation of his Constitutional and statutory rights (i.e., the legal remedy of damages is precluded), and, as a result, equitable relief in the form of an injunction is appropriate. The Court should enter a preliminary and permanent injunction that will require the State of Idaho and Bannock County, as well as their officers, agents, servants, employees, and attorneys, and anyone in active concert or participation with them to:

- a. Provide notice and information to Mr. Mitchell relating to the release and whereabouts of Simpson.
- b. Provide notice and information to Mr. Mitchell relating to Simpson's ability to acquire guns and ammunition.
- c. Provide notice and an opportunity to be heard to Mr. Mitchell in connection with any consideration of re-filing the criminal charges against Mr. Simpson.
- d. Provide notice and an opportunity to be heard to Mr. Mitchell in connection with any proceedings that may affect the conditions or terms of Simpson's release.

Third Cause of Action

Assault and Battery

(Simpsons and Does 9-12)

45. Mr. Mitchell repeats and realleges all of the preceding and subsequent paragraphs of this Complaint.

46. Simpson used deadly force in shooting Mr. Mitchell in the back on the evening of September 27, 2010. The bullet broke several of his ribs, punctured one of his lungs resulting in its collapse, and barely missed Mr. Mitchell's heart.

47. Simpson acted with the requisite intent when he deliberately aimed his revolver and fired two bullets at Mr. Mitchell's back. After the shooting, Simpson then had the presence of mind to hide the evidence by cleaning and oiling his gun, replacing the bullets, and also hiding the spent cartridges in the trash.

48. Simpson and Does 9-12 are responsible for all of the injuries resulting from Simpson's shooting of Mr. Mitchell. Mr. Mitchell seeks an award of damages in compensation for his injuries. These injuries have included medical expenses in excess of \$100,000, permanent disfigurement and scarring to Mr. Mitchell's body, permanent muscle and nerve damage, lost time and work caused by the need for medical treatment and physical rehabilitation, emotional trauma, and pain and suffering.

49. As a proximate cause of the assault and battery, Mr. Mitchell has sustained and will sustain economic and compensatory losses that will be more fully described at trial.

Fourth Cause of Action

Negligence

(Simpsons and Does 13-16)

50. Mr. Mitchell repeats and realleges all of the preceding and subsequent paragraphs of this Complaint.

51. Simpson and Does 13-16 owed a duty not to cause injury to others, regardless of whether it was caused by an intentional act, or his failure to act in a reasonable manner.

52. Simpson and Does 13-16 violated that duty when Simpson shot and injured Mr. Mitchell. Mr. Mitchell's injuries have included medical expenses in excess of \$100,000, permanent disfigurement and scarring to Mr. Mitchell's body, permanent muscle and nerve damage, lost time and work caused by the need for medical treatment and physical rehabilitation, emotional trauma, and pain and suffering.

53. As a proximate cause of Simpson's negligence, Mr. Mitchell has sustained and will sustain economic and compensatory losses that will be more fully described at trial.

Fifth Cause of Action

Negligence/Gross Negligence/Reckless/Willful

(State of Idaho and Does 17-25)

54. Mr. Mitchell repeats and realleges all of the preceding and subsequent paragraphs of this Complaint.

55. The State of Idaho took responsibility for Simpson many years ago. Simpson lived at State Hospital South and, he was in the State's hospital without walls program - - ACT. The State of Idaho had assumed some type of guardianship or special relationship over Simpson,

although the exact nature of the relationship remains hidden in the State's secret files. The State of Idaho had also assumed and undertaken a duty to protect members of the public, like Mr. Mitchell, from Simpson in the event that they found themselves close enough for Simpson to cause them harm.

56. The risk that Simpson would harm others was manifest, ostensible and highly likely to occur. The State had more than enough knowledge to understand the risks that it had created. This included:

- The State had responsibility for the supervision and treatment of Simpson for most of his adult life.
- The State had actual knowledge of Simpson's primary diagnosis - - Paranoid Psychotic Disorder.
- The State had actual knowledge of the medications that Simpson needed to take.
- The State knew that Simpson was incapable of staying on his medication unless he was monitored.
- The State knew that Simpson was not able to live or act on his own without supervision.
- The State knew that Simpson had criminal problems in the past.
- The State either knew or was reckless or negligent in not knowing that Simpson had a propensity for violence.
- The State either knew or was reckless or negligent in not knowing that Simpson had guns in his possession.
- The State either knew or was reckless or negligent in not knowing that Simpson had ammunition in his possession.
- The State knew that Simpson had not been placed in another program.

- The State made no effort to follow-up with Simpson to determine whether he was on his medications.
- The State knew or was reckless or negligent in not knowing that Simpson was a threat to others.

57. The State has refused to provide details concerning its decision to abandon Simpson, the State's failure to place Simpson in another program, or to do any follow-up or monitoring after July 1, 2010. This information is presumably contained in the State's secret files. As a result, it is alleged, based upon information and belief, that the State acted with a sufficient degree of negligence, gross negligence, recklessness and/or willfulness to support an action under the Idaho Tort Claims Act. That is, the State acted negligently, recklessly and or willfully when it stopped supervising and providing care to Simpson which allowed him to become a danger to Mr. Mitchell.

58. As a direct and proximate cause of the State of Idaho's negligence, gross negligence, recklessness and/or willfulness, Simpson used deadly force and shot Mr. Mitchell in the back on the evening of September 27, 2010. The bullet broke several of Mr. Mitchell's ribs, punctured one of his lungs resulting in its collapse, and barely missed Mr. Mitchell's heart.

59. The State of Idaho and Does 17-25 are responsible for all of the injuries resulting from Simpson's shooting of Mr. Mitchell. Mr. Mitchell seeks an award of damages in compensation for his injuries. These injuries have included medical expenses in excess of \$100,000, permanent disfigurement and scarring to Mr. Mitchell's body, permanent muscle and nerve damage, lost time and work caused by the need for medical treatment and physical rehabilitation, emotional trauma, and pain and suffering.

60. Mr. Mitchell has sustained and will sustain economic and compensatory losses that will be more fully described at trial.

Prayer For Relief

Based upon the foregoing allegations, Mr. Mitchell requests the following relief:

- (1) Issuance of an order and judgment declaring that Bannock County and the State of Idaho violated Mr. Mitchell's Constitutional and statutory rights as a crime victim. In particular, whether Bannock County and the State of Idaho violated Idaho Constitution, Article I, Section 22 and Idaho Code Section 19-3506, by, among other things, failing to:
 - a. Give Mr. Mitchell prior notification of all of the proceedings that could lead to Simpson's release.
 - b. Provide Mr. Mitchell an opportunity to be present and heard at any proceeding that may affect Simpson's release.
 - c. Inform Mr. Mitchell of any reports that were created to support the dismissal of the criminal charges or the release of Simpson.
 - d. Inform Mr. Mitchell of any plans, deals or understandings that had been reached relating to the dismissal of the criminal charges or the planned release of Simpson.
 - e. Treat Mr. Mitchell with fairness, respect, and dignity.
- (2) Issuance of a preliminary and permanent order and judgment that will enjoin and restrain Bannock County and the State of Idaho, their officers, agents, servants, employees, and attorneys, as well as anyone else with notice and who is in active concert and participation with them from violating Mr. Mitchell's Constitutional and statutory rights as a crime victim. In particular, the court should enter a

preliminary and permanent injunction that will require the State of Idaho and Bannock County, as well as their officers, agents, servants, employees, and attorneys, and anyone in active concert or participation with them to:

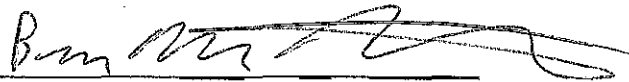
- a. Provide notice and information to Mr. Mitchell relating to the release and whereabouts of Simpson.
 - b. Provide notice and information to Mr. Mitchell relating to Simpson's ability to acquire guns and ammunition.
 - c. Provide notice and an opportunity to be heard to Mr. Mitchell in connection with any consideration of re-filing the criminal charges against Mr. Simpson.
 - d. Provide notice and an opportunity to be heard to Mr. Mitchell in connection with any proceedings that may affect the conditions or terms of Simpson's release.
- (3) Damages in an amount that will fully compensate Mr. Mitchell for all of his injuries, and in an amount in excess of \$100,000 which will be shown at trial.
- (4) An award of attorney's fees incurred in pursuing this matter.
- (5) For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs request a jury trial by a jury of twelve persons on all counts, claims and causes of action triable by jury, pursuant to Rule 38 of the Idaho Rules of Civil Procedure.

DATED this 30th day of January, 2013.

MAUK & BURGOYNE

By: 
Briane Nelson Mitchell, Of the Firm
Attorneys for Plaintiff

ORIGINAL

WILLIAM L. MAUK (ISB #1825)
BRIANE NELSON MITCHELL (ISB #2346)
MAUK & BURGOYNE
515 South 6th Street
Post Office Box 1743
Boise, Idaho 83701-1743
Telephone: (208) 345-2654
Facsimile (208) 345-3319
nels@maukburgoyne.com

FILED
BANNOCK COUNTY
CLERK OF THE COURT

13 FEB -8 PM 12:49

BY
DEPUTY

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

RYAN M. MITCHELL,

Plaintiff,

vs.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity, and
BANNOCK COUNTY, IDAHO, a political
subdivision, SUSAN SIMPSON, as
Conservator and Guardian of Gerald Durk
Simpson, and DOES 1-25,

Defendants.

Case No. CV 12-4124 OC

NOTICE OF SERVICE

PLEASE TAKE NOTICE that, Pursuant to Rule 33(a)(5) [and 34(d)], I.R.C.P., on the 5th day of February, 2013, the following discovery documents were served on Defendant State of Idaho:

- Plaintiff's First Set of Requests for Admission Pursuant to I.R.C.P. 36 To Defendant State of Idaho;
- Plaintiff's First Set of Document Requests to the State of Idaho; and
- Plaintiff's First Set of Interrogatories to the State of Idaho.

The discovery was served by hand delivery to the following:

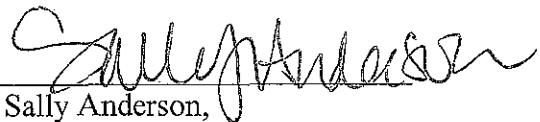
NOTICE OF SERVICE - 1

Ben Ysursa, Secretary of State
State of Idaho
700 W. Jefferson, Room E205
Boise, ID 83720

Lawrence G. Wasden
Attorney General
State of Idaho
P.O. Box 83720
Boise, ID 83720-0010

DATED this 6th day of February, 2013.

MAUK & BURGOYNE

By 
Sally Anderson,
Assistant to Briane Nelson Mitchell

CERTIFICATE OF SERVICE

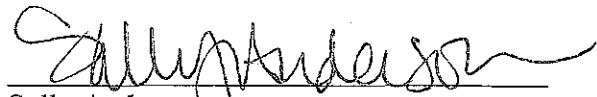
I HEREBY CERTIFY that on this 6th day of February, 2013, I caused a true and correct copy of the above and foregoing instrument to be served upon the following individuals in the manner indicated below:

Ben Ysursa, Secretary of State
State of Idaho
700 W. Jefferson, Room E205
Boise, ID 83720

☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

Brian Kane
Idaho Attorney General's Office
P.O. Box 83720
Boise, ID 83720-0010

☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery



Sally Anderson,
Assistant to Briane Nelson Mitchell

Thomas B. High, ISB No. 2430
 Bren E. Mollerup, ISB No. 7959
 BENOIT, ALEXANDER,
 HARWOOD & HIGH, L.L.P.
 126 Second Avenue North
 P.O. Box 366
 Twin Falls, Idaho 83303-0366
 Telephone: (208) 733-5463
 Fax: (208) 734-1438
 Email: high@benoitlaw.com
 Email: mollerup@benoitlaw.com
 Attorneys for Defendant State of Idaho
 (16105\Notice of Appearance\TBH\ka)

FILED
 BANNOCK COUNTY
 CLERK OF THE COURT

13 FEB 15 AM 10:26

BY *CEL*
 DEPUTY

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RYAN M. MITCHELL,

Plaintiff,

v.

GERALD DURK SIMPSON, an individual,
 STATE OF IDAHO, a governmental entity,
 and BANNOCK COUNTY, IDAHO, a
 political subdivision, SUSAN SIMPSON, as
 Conservator and Guardian of Gerald Durk
 Simpson, and DOES 1-25,

Defendants.

Case No. CV-12-4124-OC

NOTICE OF APPEARANCE

FEE CATEGORY: I.1.

FEE: \$ - 0 - *exempt*

NOTICE OF APPEARANCE - 1


TO: CLERK OF THE DISTRICT COURT OF BANNOCK COUNTY.

PLEASE TAKE NOTICE that Thomas B. High, of the law firm of Benoit, Alexander, Harwood & High, L.L.P., enters an appearance on behalf of the Defendant, STATE OF IDAHO, in the above-entitled action.

DATED this 14th day of February, 2013.

BENOIT, ALEXANDER, HARWOOD
& HIGH, L.L.P.

By


Thomas B. High

Attorneys for Defendant State of Idaho

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 14th day of February, 2013, he caused a true and correct copy of the **NOTICE OF APPEARANCE** to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743
(Attorneys for Plaintiff)

Hand Delivered
U.S. Mail
Fax
Fed. Express

<input type="checkbox"/>
<input checked="" type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>


Thomas B. High

NOTICE OF APPEARANCE - 2

Thomas B. High, ISB No. 2430
Bren E. Mollerup, ISB No. 7959
BENOIT, ALEXANDER,
HARWOOD & HIGH, L.L.P.
126 Second Avenue North
P.O. Box 366
Twin Falls, Idaho 83303-0366
Telephone: (208) 733-5463
Fax: (208) 734-1438
Email: high@benoitlaw.com
Email: mollerup@benoitlaw.com
Attorneys for Defendant State of Idaho
(16105\Answer\TBH\kca)

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RYAN M. MITCHELL,

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity,
and BANNOCK COUNTY, IDAHO, a
political subdivision, SUSAN SIMPSON, as
Conservator and Guardian of Gerald Durk
Simpson, and DOES 1-25,

COMES NOW the Defendant, STATE OF IDAHO (hereinafter “State”), by and through its attorney of record, Thomas B. High of the firm of Benoit, Alexander, Harwood & High, LLP, and answers Plaintiff’s First Amended Complaint and Demand for Jury Trial as follows:

FIRST DEFENSE

I.

In response to the statements made in Plaintiff's First Amended Complaint which are actual allegations and not characterizations, the State denies each and every allegation not otherwise specifically admitted herein below. As to Plaintiff's multiple characterizations contained within the First Amended Complaint, the State denies each and every such characterization.

II.

In answer to paragraph 51 of Plaintiff's First Amended Complaint, the State would so admit as to the Defendant Simpson. As to Does 13-16, until they are so identified, the State would deny the allegations therein.

III.

In answer to paragraph 2 of Plaintiff's First Amended Complaint, the State would note that the Idaho Constitution speaks for itself.

IV.

In answer to paragraphs 3, 6, 7, 8, 23, 24, 26, 31, 36, 46 and 47, the State lacks specific knowledge to admit or deny the allegations therein and therefore denies the same.

V.

In answer to paragraphs 9, 10 and 11 of Plaintiff's First Amended Complaint, the State would admit the allegations as to those persons specifically named in the First Amended Complaint, but do not have knowledge as to the Does 1-25 alleged by Plaintiff and therefore deny the same.

VI.

In answer to paragraph 16 of Plaintiff's First Amended Complaint, the State admits only that the Statute identified therein speaks for itself and denies the remaining assertions, allegations or characterizations made therein.

VII.

In answer to paragraph 27 of Plaintiff's First Amended Complaint, the State only admits that the Court's Order of April 17, 2012 speaks for itself and denies the remaining assertions, allegations or characterizations made therein.

VIII.

In answer to paragraph 33 of Plaintiff's First Amended Complaint, the State only admits the content of the Court's Order of August 30, 2012 and denies the remaining assertions, allegations or characterizations made therein.

IX.

In answer to paragraphs 38, 42, 45, 50 and 54 of Plaintiff's First Amended Complaint, the State reasserts its responses to the preceding and subsequent paragraphs of Plaintiff's First Amended Complaint.

X.

The State admits the allegation of paragraph 52 of Plaintiff's First Amended Complaint that Simpson violated various duties owed Plaintiff. The remaining allegations therein are denied.

XI.

In answer to that portion of Plaintiff's First Amended Complaint entitled "Prayer for Relief," the State denies any allegations that may be enumerated therein.

ANSWER - 3

SECOND DEFENSE

As a further, separate and affirmative defense as to Plaintiff's First and Second Cause of Action in Plaintiff's First Amended Complaint, the State would allege that the Causes of Action fail to state a claim upon which relief may be granted.

THIRD DEFENSE

That State alleges that neither the Idaho Constitution nor the Idaho Statutory Code provisions cited by Plaintiff provide for a private cause of action.

FOURTH DEFENSE

The State would assert that it is immune in this action.

FIFTH DEFENSE

The State asserts that Plaintiff's Third and Fourth Causes of Action state no claim against the State or its agents.

SIXTH DEFENSE

The State asserts that Plaintiff's claim fails under the Idaho Tort Claims Act, including but not limited to I.C. § 6-904A.

SEVENTH DEFENSE

The State asserts that Plaintiff's injuries were caused by third parties, to and including, Gerald Dirk Simpson.

EIGHTH DEFENSE

The State reserves the right to assert additional defense, including affirmative defenses, which may be revealed in discovery.

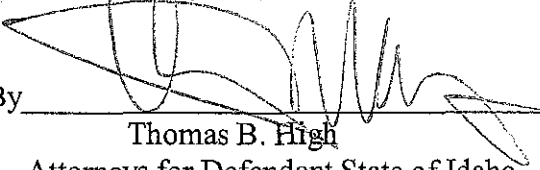
WHEREFORE, the STATE OF IDAHO prays judgment as follows:

1. That Plaintiff's First Amended Complaint and each and every Cause of Action against the State are dismissed with prejudice;
2. That the State be awarded fees and costs in defending this action; and
3. For such other and further relief as the Court deems just and proper.

DATED this 22nd day of February, 2013.

BENOIT, ALEXANDER, HARWOOD
& HIGH, L.L.P.

By


Thomas B. High

Attorneys for Defendant State of Idaho

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 22nd day of February, 2013, he caused a true and correct copy of the **ANSWER** to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743
(Attorneys for Plaintiff)

Hand Delivered ☐
U.S. Mail ☒
Fax ☐
Fed. Express ☐


Thomas B. High

ANSWER - 5

Thomas B. High, ISB No. 2430
 Bren E. Mollerup, ISB No. 7959
 BENOIT, ALEXANDER,
 HARWOOD & HIGH, L.L.P.
 126 Second Avenue North
 P.O. Box 366
 Twin Falls, Idaho 83303-0366
 Telephone: (208) 733-5463
 Fax: (208) 734-1438
 Email: high@benoitlaw.com
 Email: mollerup@benoitlaw.com
 Attorneys for Defendant State of Idaho
 (16105\Discovery\Notice of Service (Res to Plain 1st Set of Requests for Admission\TBH\ka)

FILED
 BANNOCK COUNTY
 CLERK OF THE COURT
 13 FEB 25 AM 10:23
 BY *[Signature]*
 DEPUTY

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RYAN M. MITCHELL,

 Plaintiff,

v.

GERALD DURK SIMPSON, an individual,
 STATE OF IDAHO, a governmental entity,
 and BANNOCK COUNTY, IDAHO, a
 political subdivision, SUSAN SIMPSON, as
 Conservator and Guardian of Gerald Durk
 Simpson, and DOES 1-25,

 Defendants.

Case No. CV-12-4124-OC

**NOTICE OF SERVICE OF
 DISCOVERY DOCUMENT**

Pursuant to Rule 36 of the Idaho Rules of Civil Procedure, notice is hereby given by the undersigned party that the original and a copy of RESPONSES TO PLAINTIFF'S FIRST SET

NOTICE OF SERVICE OF DISCOVERY DOCUMENT - 1

OF REQUESTS FOR ADMISSION PURSUANT TO I.R.C.P. 36 TO DEFENDANT STATE

OF IDAHO were served upon the following attorney for the Plaintiff, by placing the same in the

U.S. mail with postage prepaid thereon to:

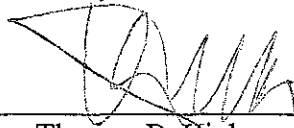
William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743

The original document is being sent to Plaintiff's counsel to be retained in his file.

DATED this 22nd day of February, 2013.

BENOIT, ALEXANDER, HARWOOD
& HIGH, L.L.P.

By



Thomas B. High

Attorneys for Defendant State of Idaho

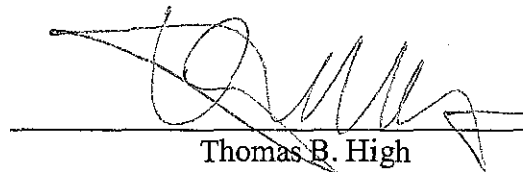
CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 22nd day of February, 2013, he caused a true and correct copy of the **NOTICE OF SERVICE OF DISCOVERY DOCUMENT** to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743
(Attorneys for Plaintiff)

Hand Delivered
U.S. Mail
Fax
Fed. Express

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<input type="checkbox"/>
<input type="checkbox"/>



Thomas B. High

NOTICE OF SERVICE OF DISCOVERY DOCUMENT - 2

STEVE HERZOG
BANNOCK COUNTY PROSECUTOR
P.O. BOX P
POCATELLO, ID 83205-0050
TELEPHONE: (208) 236-7280
FACSIMILE: (208) 236-7288

FILED
BANNOCK COUNTY
CLERK OF THE COURT
13 FEB 27 AM 8:14
BY
DEPUTY

Ian N. Service, ISB#7904
Deputy Prosecuting Attorney

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RYAN M. MITCHELL,

Plaintiff,

vs.

GERALD DURK SIMPSON, an individual)
STATE OF IDAHO, a governmental entity,)
BANNOCK COUNTY, IDAHO, a political)
Subdivision, SUSAN SIMPSON, as)
Conservator and Guardian of Gerald Durk)
Simpson, and DOES 1-25,)

Defendants.)

CASE NO. CV-2012-4124-OC

ANSWER TO PLAINTIFF'S
FIRST AMENDED COMPLAINT

COMES NOW, the Defendant, **BANNOCK COUNTY** (hereinafter DEFENDANT),
by and through IAN N. SERVICE, a Bannock County Deputy Prosecuting Attorney, and
in ANSWER to Plaintiff's Complaint states and alleges as follows:

Introduction

1. Defendant denies this paragraph of the complaint in its entirety.
2. Defendant admits to the existence of Idaho's Constitution, Article I, Section 22,

and Idaho Code §19-5306 "RIGHTS OF VICTIM DURING INVESTIGATION,"
Answer to Plaintiff's Complaint - Page 1

PROSECUTION, AND DISPOSITION OF THE CRIME.” Defendant denies the listed enumeration of I.C. §19-5306, as Plaintiff has numbered (1) through (7) in the Complaint.

Parties

3. Defendant admits Plaintiff resided in Bannock County, State of Idaho, but is without knowledge or information sufficient to form a belief as to the truth of any other facts alleged in paragraph one of this section of the Complaint and therefore denies the remainder of this paragraph.

4. Defendant admits that Defendant Gerald Durk Simpson was a resident of Bannock County on or about September 27, 2010, but is without knowledge or information sufficient to form a belief as to Simpson’s status or care by the State of Idaho (also a named defendant), OR information or belief as to where Simpson is currently residing - either in Bannock County, or Bingham County.

5. Defendant denies this paragraph in its entirety, as it contains information regarding knowledge of a listed Co-Defendant – the State of Idaho - through its Department of Health and Welfare; to which Defendant Bannock County is without knowledge or information sufficient to form a response as to the truth of the allegations asserted in this paragraph of the Complaint.

6. Defendant admits to having limited Jurisdiction for criminal prosecutions within Bannock County, and further protecting and respecting the rights of all victims to crimes within Bannock County, Idaho. Defendant denies the assertion that Bannock County is responsible for pursuing all civil commitment proceedings, specifically, proceedings against Simpson. Co-Defendant, The State of Idaho, through the

Department of Health and Welfare, has the responsibility of civil commitment proceedings, whether initiated by court order, or some other statute.

7. Defendant denies paragraph seven of this section of the Complaint in its entirety. Defendant is without knowledge or information sufficient to form a belief as to the truth of the Plaintiff's assertions as to Co-Defendant's status as a sibling to Gerald Durk Simpson, or her status as an appointed Guardian to the same, or whether she consents to Idaho Jurisdiction by virtue of said asserted guardianship.

8. Defendant denies paragraph eight of this section of the Complaint in its entirety.

Jurisdiction

9. Defendant Bannock County admits to Jurisdiction of the Court under Idaho Code §1-705, and §6-914; but denies having any information or knowledge of the Court's Jurisdiction over listed Co-Defendants.

10. Defendant admits to venue in Bannock County, because Defendant is Bannock County.

11. Defendant denies receiving proper notice of the tort claim per Idaho Code §6-901, and denies any tort has occurred because of Bannock County's actions. Further, Plaintiff does not seek compensatory damages for any tort, nor does Plaintiff allege Bannock County's actions have caused him to suffer any bodily injuries or, property damage.

Background per Plaintiff

12. Defendant Bannock County admits to charging Gerald Durk Simpson with Aggravated Battery Under Idaho Criminal Code §18-903, and §18-907(1)(a)&(b) for events occurring on or about September 27th, 2010. The Court can take judicial

notice on Bannock County Case CR 2010-15926-FE, and the proceedings therein. Defendant denies the remainder of this paragraph having insufficient information or knowledge to form a belief other than what was alleged in the charging documents.

13. Defendant admits that Plaintiff lives today. Defendant is without information or knowledge to confirm Plaintiff's assertions in paragraph thirteen.

14. Defendant denies this paragraph as Plaintiff alleges because Plaintiff has insufficient personal knowledge of these and all assertions and allegations as to Defendant Simpson's actions, and Defendant Bannock County cannot admit to Plaintiff's assertions without citation or personal knowledge of Simpson's actions.

15. Defendant Bannock County denies paragraph fifteen in its entirety regarding Simpson's "longstanding" mental disease, or care – voluntary or involuntary - provided by the State of Idaho, ACT team, for "most of his adult life" as asserted. Defendant Bannock County is without information or knowledge to confirm Plaintiff's assertions regarding the actions of Co-Defendants - the State of Idaho, Department of Health and Welfare, or ACT Team regarding custody or control of Defendant Simpson at any time during his adult life

16. Defendant denies in part, and admits in part paragraph sixteen. Defendant has no information or knowledge as to Plaintiff's assertions regarding the "ACT Teams" as described in the first sentence of this paragraph. Defendant admits that Idaho Code §39-3128 as cited.

17. Defendant denies paragraph seventeen in its entirety because Defendant has no information or knowledge sufficient to form a belief as to the Plaintiff's assertions therein.

18. Defendant denies paragraph eighteen in its entirety because Defendant has no information or knowledge sufficient to form a belief as to the Plaintiff's assertions therein regarding the arrest of Mr. Simpson except as noted above, judicial notice to CR 2010-15926-FE. Plaintiff asserts conversations between Pocatello Police and the Department of Health and Welfare, including quotes from the State of Idaho without citation or reference. Defendant cannot rely or form belief as to the asserted conversations between other 3rd parties, not Bannock County.

19. Defendant denies paragraph nineteen in its entirety because Defendant has no information or knowledge sufficient to form a belief as to the Plaintiff's assertions therein.

20. Defendant denies paragraph twenty in its entirety because Defendant has no information or knowledge sufficient to form a belief as to the Plaintiff's assertions therein.

21. Defendant admits to paragraph twenty-one with corrections. Pocatello Police with Bannock County Prosecutor, chief Deputy Vic Pearson prepare a search warrant on September 27, 2010 to search Mr. Simpson's apartment. The Warrant was signed by Sixth District Magistrate Judge Clark. Evidence reports are contained

in CR 2010-15926 FE as filed with the District Court against Simpson as indicated
Answer to Plaintiff's Complaint - Page 5

above for judicial notice.

22. Defendant denies paragraph twenty-two in its entirety because Defendant has no information or knowledge sufficient to form a belief as to the Plaintiff's assertions therein.

23. Defendant admits to paragraph twenty-three, except the assertion or any implication that Attempted Murder charges should have been filed against Simpson.

24. Defendant denies paragraph twenty-four in its assertion of timing regarding court procedures. By Judicial notice, the Court can see the timing and orders of the Magistrate Court to appoint counsel to Simpson, and order evaluations under Idaho Code §§18-210, 211, and 212. Defendant denies that Simpson's defense counsel hired Dr. Hatzenbeuhler, but rather the Doctor was Court appointed for evaluation under Idaho Codes §§18-210 -212.

25. Defendant admits paragraph twenty-five.

26. Defendant admits in part, and denies in part, paragraph twenty-six of the Complaint. Defendant admits that Simpson's defense counsel filed an objection to the findings of Dr. Baker of State Hospital South, for Simpson's fitness for trial. Defendant denies Plaintiff's assertion that Bannock County Prosecuting Attorney's office "did not object and stipulated to a second evaluation by the psychologist who had been hired by, and was working with, Simpson's lawyer." Defendant asserts that Dr. Hatzenbeuhler was not hired by Simpson's defense counsel, but rather she

was Court appointed for evaluations. See: *Order for Psychological Evaluation*, filed Answer to Plaintiff's Complaint - Page 6

December 15, 2010, by Judge Carnaroli, CR 2010-15926 FE.

27. Defendant admits paragraph twenty-seven in its entirety. See: *Order Dismissing Complaint Without Prejudice*, by Judge Carnaroli, dated 30th August 2012, CR 2010-15926-FE.

28. Defendant denies paragraph twenty-eight in its entirety.

29. Defendant denies paragraph twenty-nine in its entirety having no knowledge or information of any proceedings instituted in Bingham County, Idaho for Guardianship of Mr. Simpson.

30. Defendant denies paragraph thirty in its entirety having no knowledge or information of any proceedings instituted in Bingham County, Idaho regarding the hold on Mr. Simpson or any other assertions made therein.

31. Defendant denies paragraph thirty-one in its entirety having no knowledge or information of any proceedings instituted by the State's Deputy Attorney General in Bingham County, Idaho for Guardianship of Mr. Simpson or knowledge of any disposition therein.

32. Defendant denies paragraph thirty-two in its entirety.

33. Defendant denies paragraph thirty-three, in its entirety, but for one exception whereas Defendant admits that the Bannock County Sixth Judicial Magistrate Judge Carnaroli dismissed the criminal charges against Simpson. See: *Order Dismissing*

Complaint Without Prejudice, dated 30 August 2012.

34. Defendant denies Plaintiff's assertion or implication in paragraph thirty-four as to Bannock County or the Prosecutor's Office of Bannock County owing any duty to prevent Simpson from acquiring or owning guns, or any duty to force the Court to make such findings per Idaho Code §66-356(1)f. See: *Idaho Code §66-356*, duty on the court.

35. Defendant denies paragraph thirty-five in its entirety.

36. Defendant denies paragraph thirty-six in its entirety.

37. Defendant denies paragraph thirty-seven in its entirety, and Defendant is without information and knowledge as to any Bingham County, Idaho Court proceedings, or notice requirements.

Answer to First Cause of Action

38. Defendant denies this paragraph in its entirety.

39. Defendant denies this paragraph in its entirety.

40. Defendant denies this paragraph in its entirety.

41. Defendant denies this paragraph in its entirety, including subsections a – e.

Answer to Second Cause of Action

42. Defendant denies this paragraph in its entirety

43. Defendant denies this paragraph in its entirety

44. Defendant denies this paragraph in its entirety, including subsections a – d.

Answer to third Cause of Action

45. Defendant denies paragraphs 45 through 49 in their entirety, as Bannock County, a governmental subsidiary, denies all duty and liability for tortuous claims of

“Assault and Battery” caused by third-parties.

Answer to Fourth Cause of Action

50. Defendant denies paragraphs 50 through 53 in their entirety, as Bannock County, a governmental subsidiary, denies all duty and liability for tortuous claims of "Negligence" caused by third-parties.

Answer to Fifth Cause of Action

54. Defendant denies paragraphs 54 through 60 in their entirety, as Bannock County, a governmental subsidiary, denies all duty and liability for tortuous claims of "Negligence/Gross Negligence/Reckless [sic]/Willful [sic]" caused by third-parties.

Defendant's AFFIRMATIVE DEFENSES

FIRST AFFRIMATIVE DEFENSE

Plaintiff fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails because the Court lacks subject matter jurisdiction.

THIRD AFFIRMATIVE DEFENSE

Circumstances constituting a violation of Constitutional rights must be stated with particularity, and Plaintiff's Complaint fails to do so.

EIGHTH AFFIRMATIVE DEFENSE

To the extent any damages to Plaintiff herein, caused third persons, Defendant is not responsible, thereof.

RESERVATION

Defendant hereby reserves the right to amend this response upon further investigation, and prior to the conclusion of the discovery process. Each and every allegation of the Plaintiff's Complaint not specifically admitted herein is denied.

Prayer for Relief

WHEREFORE, the Defendant prays for judgment against the Plaintiff as follows:

1. That the Plaintiff be denied a jury trial.
2. That the Plaintiff's Complaint be dismissed with prejudice
3. That the Court order plaintiff herein to pay attorney fees for the County, since this suit has no basis in law or fact pursuant to I.C. § 12-121.
4. For any other such relief as the Court deems just and proper.

DATED this 26th day of February, 2013.



IAN N. SERVICE
Deputy Prosecuting Attorney #7904

VERIFICATION

The Respondent, by and through Deputy Prosecuting Attorney Ian N. Service,
being first duly sworn under oath, deposes and says:

- 1) I am the attorney for the Defendant in the above-entitled matter.
- 2) That the facts contained in the foregoing Answer to Plaintiff's Complaint
are true and correct to the best of my information and belief.



IAN N. SERVICE
Deputy Prosecuting Attorney #7904

STATE OF IDAHO

)

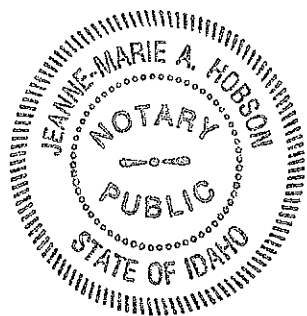
) ss:

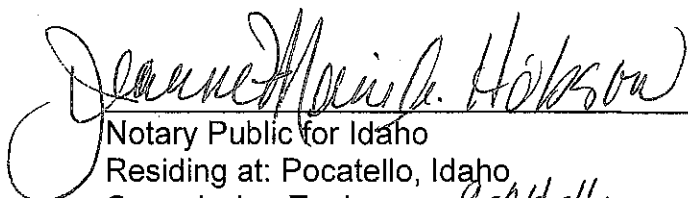
County of Bannock

)

I hereby certify that on this 28 February 2013, personally appeared before me
who, being first duly sworn, declared that he is representing the Respondent in this
action, and that the statements contained in the foregoing document are believed to be
true to the best of my information and belief.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official
seal on the day and year first above written.



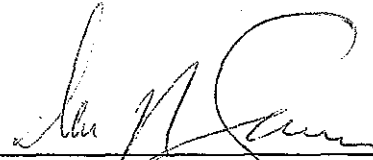

Notary Public for Idaho
Residing at: Pocatello, Idaho
Commission Expires: 9-24-16

CERTIFICATE OF DELIVERY


I **HEREBY CERTIFY** that a true and correct copy of the Defendant's Answer to Plaintiff's Complaint in the above matter was delivered in the manner following this 20th day of February, 2013.

Briane Nelson Mitchell
Attorney for Plaintiff (#2346)
515 South 6th Street
P.O. Box 1743
Boise, ID 83701
Work TELE No. 208-345-2654
Fax TELE No. 208-345-3319

☒ U.S. Mail—postage prepaid



IAN N. SERVICE
Deputy Prosecuting Attorney #7904

FILED
BAMCOCK COUNTY
CLERK OF THE COURT
13 MAR -4 AM 10:51
BY  DEPUTY

(16105\Discovery\Notice of Service (Amended Res to Plain 1st Set of Requests for Admission\TBFHka)

* * * * *

**NOTICE OF SERVICE OF
DISCOVERY DOCUMENT**

* * * * *

NOTICE OF SERVICE OF DISCOVERY DOCUMENT - 1

FIRST SET OF REQUESTS FOR ADMISSION PURSUANT TO I.R.C.P. 36 TO

DEFENDANT STATE OF IDAHO were served upon the following attorney for the Plaintiff, by

placing the same in the U.S. mail with postage prepaid thereon to:

William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743

The original document is being sent to Plaintiff's counsel to be retained in his file.

DATED this 28th day of February, 2013.

BENOIT, ALEXANDER, HARWOOD
& HIGH, L.L.P.

By


Thomas B. High

Attorneys for Defendant State of Idaho

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 28th day of February, 2013, he caused a true and correct copy of the **NOTICE OF SERVICE OF DISCOVERY DOCUMENT** to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743
(Attorneys for Plaintiff)

Hand Delivered ☐
U.S. Mail ☒
Fax ☐
Fed. Express ☐


Thomas B. High

NOTICE OF SERVICE OF DISCOVERY DOCUMENT - 2

Thomas B. High, ISB No. 2430
Bren E. Mollerup, ISB No. 7959
BENOIT, ALEXANDER,
HARWOOD & HIGH, L.L.P.
126 Second Avenue North
P.O. Box 366

Twin Falls, Idaho 83303-0366

Telephone: (208) 733-5463

Fax: (208) 734-1438

Email: high@benoitlaw.com

Email: mollerup@benoitlaw.com

Attorneys for Defendant State of Idaho

(16105\Discovery\Notice of Service (Ans to Plain 1st Set of Interrogs to Def & Res to Plain 1st Set of Doc Req to Def)\TBH\ka)

FILED
BANNOCK COUNTY
CLERK OF THE COURT
13 APR -4 AM 11:55
BY *CS* DEPUTY

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RYAN M. MITCHELL,

Plaintiff,

v.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity,
and BANNOCK COUNTY, IDAHO, a
political subdivision, SUSAN SIMPSON, as
Conservator and Guardian of Gerald Durk
Simpson, and DOES 1-25,

Defendants.

Case No. CV-12-4124-OC

**NOTICE OF SERVICE OF
DISCOVERY DOCUMENTS**

Pursuant to Rules 33 and 34 of the Idaho Rules of Civil Procedure, notice is hereby given
by the undersigned party that the original and a copy of ANSWERS TO PLAINTIFF'S FIRST

NOTICE OF SERVICE OF DISCOVERY DOCUMENTS - 1

**SET OF INTERROGATORIES TO DEFENDANT STATE OF IDAHO; RESPONSES TO
PLAINTIFF'S FIRST SET OF DOCUMENT REQUESTS TO DEFENDANT STATE OF
IDAHO; and PRIVILEGE AND STATUTORY EXEMPTION LOG** were served upon the

following attorney for the Plaintiff, by placing the same in the U.S. mail with postage prepaid thereon to:

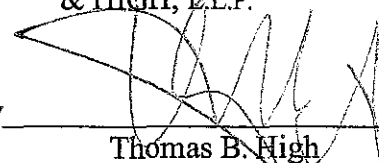
William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743

The original documents are being sent to Plaintiff's counsel to be retained in his file.

DATED this 2nd day of April, 2013.

BENOIT, ALEXANDER, HARWOOD
& HIGH, L.L.P.

By



Thomas B. High
Attorneys for Defendant State of Idaho

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 2nd day of April, 2013, he caused a true and correct copy of the NOTICE OF SERVICE OF DISCOVERY DOCUMENTS to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743
(Attorneys for Plaintiff)

Hand Delivered
U.S. Mail
Fax
Fed. Express

<input type="checkbox"/>
<input checked="" type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>



Thomas B. High

ORIGINAL

FILED
13 JUN 12 PM 1:22
BY [Signature] DEPUTY

WILLIAM L. MAUK (ISB #1825)
BRIANE NELSON MITCHELL (ISB #2346)
MAUK & BURGOYNE
515 South 6th Street
Post Office Box 1743
Boise, Idaho 83701-1743
Telephone: (208) 345-2654
Facsimile (208) 345-3319
nels@maukburgoyne.com

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

RYAN M. MITCHELL,)	
	)	Case No. CV 12-4124 OC
Plaintiff,)	
vs.)	
)	
GERALD DURK SIMPSON, an individual,	)	STIPULATED CONSENT DECREE
STATE OF IDAHO, a governmental entity, and	)	AND FINAL JUDGMENT BETWEEN
BANNOCK COUNTY, IDAHO, a political	)	RYAN M. MITCHELL
subdivision, SUSAN SIMPSON, as	)	AND BANNOCK COUNTY
Conservator and Guardian of Gerald Durk)	
Simpson, and DOES 1-25,)	
)	
Defendants.)	

COMES NOW The Plaintiff, Ryan M. Mitchell, and the Defendant Bannock County, Idaho, a political subdivision, by and through their respective attorneys and hereby stipulate to the following Consent Decree and Final Judgment.

BACKGROUND

1. The Idaho Constitution provides that crime victims have certain rights which include:

STIPULATED CONSENT DECREE AND FINAL JUDGMENT BETWEEN RYAN M. MITCHELL AND BANNOCK COUNTY--1

- (1) To be treated with fairness, respect, dignity and privacy throughout the criminal justice process.
- (2) To timely disposition of the case.
- (3) To prior notification of trial court, appellate and parole proceedings and, upon request, to information about the sentence, incarceration and release of the defendant.
- (4) To be present at all criminal justice proceedings.
- (5) To communicate with the prosecution.
- (6) To be heard, upon request, at all criminal justice proceedings considering a plea of guilty, sentencing, incarceration or release of the defendant, unless manifest injustice would result.
- (7) To restitution, as provided by law, from the person committing the offense that caused the victim's loss.

Idaho Constitution, Article I, Section 22. *See also* I.C. § 19-5306.

2. On the night of September 27, 2010, Gerald Durk Simpson shot Ryan Mitchell in the back. The bullet entered Mr. Mitchell's back, shattering his ribs, puncturing his lung and barely missing his heart. The shooting occurred at 10:00 p.m. outside of Mocha Madness, a coffee shop located at 546 South Fifth Avenue in Pocatello, near the Idaho State University campus.

3. On September 28, 2010, the next day after the shooting, the Pocatello Police quickly determined that Simpson, who lived across the street from Mocha Madness, had shot Mr. Mitchell. Simpson was immediately taken into custody, based upon the officers' determination that Simpson was a danger to himself and others.

4. The Bannock County Prosecuting Attorney's Office filed a charge of Aggravated Battery against Simpson (I.C. §§ 18-903(a), 18-907(1)(a) & (b)) with notice that the State would seek an enhancement penalty for the use of a deadly weapon in the commission of a crime (I.C. § 18-2520). The charge stated that Simpson:

STIPULATED CONSENT DECREE AND FINAL JUDGMENT BETWEEN RYAN M.
MITCHELL AND BANNOCK COUNTY--2

[W]as accused of having committed the crime of Aggravated Battery in Bannock County, Idaho on September 27, 2010, [by] willfully and unlawfully using force or violence upon the person of Ryan Mitchell, [by] either the use of a deadly weapon or instrument and/or causing great bodily harm or permanent disability or permanent disfigurement by shooting Ryan Mitchell in the back.

5. The Bannock County District Court ordered the commitment of Simpson to the custody of the State of Idaho, Department of Health and Welfare pursuant to Idaho Code Section 18-212 for care and treatment at an appropriate facility. Simpson's commitment to the custody of the State of Idaho was extended on several occasions. The Court eventually held a competency hearing and, on April 17, 2012, ordered one more ninety day commitment of Simpson.

6. On July 16, 2012, Simpson was released from the custody of the State of Idaho. The Bannock County Prosecuting Attorney's Office had prior notice of and approved the State's plan to release Simpson from custody.

7. On August 30, 2012, the Court dismissed the criminal charge against Simpson. The Bannock County Prosecuting Attorney's Office did not oppose the dismissal of the criminal charge against Simpson.

8. On September 4, 2012, the Bannock County Prosecuting Attorney's Office mailed a letter to Mr. Mitchell that said, in part, the following:

We have received a ruling from the court concerning the above stated matter, a copy of which is attached for your information. Please be aware that should Mr. Simpson become mentally capable to assist in his own defense, charges could be filed again at that time.

STIPULATED CONSENT DECREE AND FINAL JUDGMENT BETWEEN RYAN M. MITCHELL AND BANNOCK COUNTY--3

9. The Bannock County Prosecuting Attorney's Office did not notify Mr. Mitchell that Simpson's commitment to State custody would expire on or around July 16, 2012. The Bannock County Prosecuting Attorney's Office never notified Mr. Mitchell that Simpson was released from State custody on July 16, 2012.

10. The Bannock County Prosecuting Attorney's Office never notified Mr. Mitchell that the Bannock County Court was considering dismissing the criminal charge against Simpson.

11. Ryan M. Mitchell has filed a lawsuit against Bannock County, Simpson, as well as the State of Idaho. That lawsuit asserts two claims against Bannock County for: (1) declaratory judgment with respect to the violation of Mr. Mitchell's Constitutional and statutory rights as a crime victim, and (2) injunctive relief insuring that Mr. Mitchell's rights are not violated in the future. Bannock County and Mr. Mitchell, by means of this Consent Decree and Judgment, now seek to resolve all claims and controversies between them.

IT IS HEREBY STIPULATED AND AGREED that the Court shall enter the following Judgment and Decree:

IT IS HEREBY FOUND, based upon the Stipulated Consent Decree and Final Judgment between Ryan M. Mitchell and Bannock County, that there is no just reason for delay in the entry of a final judgment on the claims brought against Bannock County.

IT IS HEREBY ORDERED AND DECLARED pursuant to Idaho Code Section 10-1201, et seq., that Bannock County violated the rights of Ryan M. Mitchell under the Idaho Constitution, Article I, Section 22 and Idaho Code Section 19-5306 by failing to give Ryan M. Mitchell prior notification of (1) the criminal proceedings that resulted in the release of Gerald

STIPULATED CONSENT DECREE AND FINAL JUDGMENT BETWEEN RYAN M.
MITCHELL AND BANNOCK COUNTY--4

Durk Simpson from State custody and the dismissal of the criminal charge against Gerald Durk Simpson, and (2) the opportunity to be present and heard at any of those criminal proceedings.

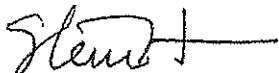
IT IS HEREBY ORDERED AND ADJUDGED that Bannock County and its officers, agents, servants, employers and attorneys are ordered to provide Ryan M. Mitchell with notice and an opportunity to be heard at any future criminal proceedings in Bannock County, if any, arising from Gerald Durk Simpson's shooting of Mr. Mitchell.

IT IS FURTHER ORDERED that Ryan M. Mitchell and Bannock County each bear their own costs and fees with respect to each other (but this does not affect the right of either to pursue costs and fees against any of the other parties to this matter).

DATED This 10 day of JUNE, 2013

BANNOCK COUNTY

RYAN M. MITCHELL

By 
Attorneys for Bannock County

By 
Attorneys for Plaintiff Ryan M. Mitchell

STIPULATED CONSENT DECREE AND FINAL JUDGMENT BETWEEN RYAN M.
MITCHELL AND BANNOCK COUNTY--5

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of June, 2013, I caused a true and correct copy of the above and foregoing instrument to be served upon the following individuals in the manner indicated below:

Thomas B. High
Bren E. Mollerup
Benoit, Alexander, Harwood & High, LLP
126 Second Avenue North
P.O. Box 366
Twin Falls, ID 83303-0366

☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

Attorneys for Defendant State of Idaho

Stephen F. Herzog
Bannock County Prosecutor's Office
PO Box P
Pocatello, ID 83205

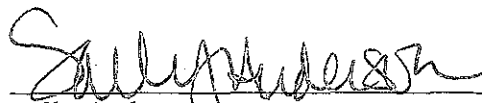
☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

Attorneys for Defendant Bannock County

Susan Simpson
765 Channing Ave.
Palo Alto, CA 94301

☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

*As Conservator and Guardian of
Gerald Durk Simpson*



Sally Anderson,
Assistant to Briane Nelson Mitchell

STIPULATED CONSENT DECREE AND FINAL JUDGMENT BETWEEN RYAN M.
MITCHELL AND BANNOCK COUNTY--6

Thomas B. High, ISB No. 2430
 Bren E. Mollerup, ISB No. 7959
 BENOIT, ALEXANDER,
 HARWOOD & HIGH, L.L.P.
 126 Second Avenue North
 P.O. Box 366
 Twin Falls, Idaho 83303-0366
 Telephone: (208) 733-5463
 Fax: (208) 734-1438
 Email: high@benoitlaw.com
 Email: mollerup@benoitlaw.com
 Attorneys for Defendant State of Idaho
 (16105\Ssummary Judgment\Motion for Summary Judgment\BEM\ka)

FILED
 CLERK OF DISTRICT COURT
 13 JUN 28 AM 11:10
 BY DEPUTY

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RYAN M. MITCHELL,

Plaintiff,

v.

GERALD DURK SIMPSON, an individual,
 STATE OF IDAHO, a governmental entity,
 and BANNOCK COUNTY, IDAHO, a
 political subdivision, SUSAN SIMPSON, as
 Conservator and Guardian of Gerald Durk
 Simpson, and DOES 1-25,

Defendants.

Case No. CV-12-4124-OC

**MOTION FOR SUMMARY
 JUDGMENT**

COMES NOW the above-entitled Defendant, State of Idaho, by and through its attorney of record, Benoit, Alexander, Harwood & High, LLP, and moves this Court for Summary Judgment in its favor pursuant to Rule 56(b).

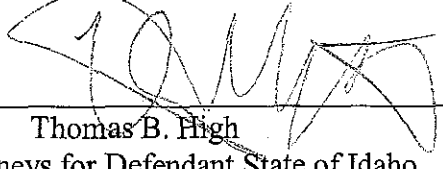
MOTION FOR SUMMARY JUDGMENT - 1

This Motion is based upon the pleadings and documents on file with the Court, the Statement of Undisputed Facts, Memorandum in Support of the Motion, and supporting Affidavits filed simultaneously herewith.

DATED this 26th day of June, 2013.

BENOIT, ALEXANDER, HARWOOD
& HIGH, L.L.P.

By


Thomas B. High

Attorneys for Defendant State of Idaho

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 26th day of June, 2013, he caused a true and correct copy of the **MOTION FOR SUMMARY JUDGMENT** to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743
(Attorneys for Plaintiff)

Hand Delivered ☐
U.S. Mail ☒
Fax ☐
Fed. Express ☐

Ian N. Service
Deputy Prosecuting Attorney
Bannock County
P.O. Box P
Pocatello, ID 83205-0050
(Attorney for Defendant Bannock County,
Idaho)

Hand Delivered ☐
U.S. Mail ☒
Fax ☐
Fed. Express ☐


Thomas B. High

MOTION FOR SUMMARY JUDGMENT - 2

Thomas B. High, ISB No. 2430
 Bren E. Mollerup, ISB No. 7959
 BENOIT, ALEXANDER,
 HARWOOD & HIGH, L.L.P.
 126 Second Avenue North
 P.O. Box 366
 Twin Falls, Idaho 83303-0366
 Telephone: (208) 733-5463
 Fax: (208) 734-1438
 Email: high@benoitlaw.com
 Email: mollerup@benoitlaw.com
 Attorneys for Defendant State of Idaho
 (16105\Memorandum in Support of Motion for Summary Judgment\BEM)

FILED
 CLERK OF DISTRICT COURT
 13 APR 28 AM 11:10
 DEPUTY

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RYAN M. MITCHELL,

Plaintiff,

v.

GERALD DURK SIMPSON, an individual,
 STATE OF IDAHO, a governmental entity,
 and BANNOCK COUNTY, IDAHO, a
 political subdivision, SUSAN SIMPSON, as
 Conservator and Guardian of Gerald Durk
 Simpson, and DOES 1-25,

Defendants.

Case No. CV-12-4124-OC

**MEMORANDUM IN SUPPORT OF
 MOTION FOR SUMMARY
 JUDGMENT**

COMES NOW, the above entitled Defendant, State of Idaho ("State"), by and through its attorneys of record, Benoit, Alexander, Harwood & High, LLP and submits this Memorandum in Support of its Motion for Summary Judgment.

MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 1

GOVERNING LAW

Summary judgment may be entered only if “the pleadings, deposition, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” I.R.C.P. 56(c); *see also Avila v. Wahlquist*, 126 Idaho 745, 747, 890 P.2d 331, 333 (1995); *Idaho Bldg. Contractors Ass’n v. City of Coeur d’Alene*, 126 Idaho 740, 742, 890 P.2d 326, 328 (1995). When a summary judgment motion has been supported by depositions, affidavits or other evidence, the adverse party may not rest upon the mere allegations or denials of that party’s pleadings, but by affidavits or as otherwise provided in the rule, must set forth specific facts showing that there is a genuine issue for trial. I.R.C.P. 56(e); *see also Gardner v. Evans*, 110 Idaho 925, 929, 719 P.2d 1185, 1189 (1986). When reviewing a motion for summary judgment, all controverted facts are to be liberally construed in favor of the non-moving party. *Cox v. City of Sandpoint*, 140 Idaho 127, 129 (Ct. App. 2003). The court must also draw all reasonable inferences in favor of the nonmoving party. *Id.*

If the moving party challenges an element of the nonmoving party’s case on the basis that no genuine issue of material fact exists, the burden then shifts to the nonmoving party to come forward with sufficient evidence to create a genuine issue of fact. *Tingley v. Harrison*, 125 Idaho 86, 90, 867 P.2d 960, 964 (1994). Summary judgment is properly granted in favor of the moving party, when the nonmoving party fails to establish the existence of an element essential to that party’s case upon which that party bears the burden of proof at trial. *Thomson v. Idaho Ins. Agency, Inc.*, 126 Idaho 527, 530-531, 887 P.2d 1034, 1037-1038 (1994); *Badell v. Beeks*, 115 Idaho 101, 102, 765 P.2d 126, 127 (1988). The party opposing the summary judgment motion

MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 2

“may not rest upon the mere allegations or denials of that party’s pleadings, but the party’s response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.” I.R.C.P. 56(e). If the nonmoving party does not come forward with evidence as provided in I.R.C.P. 56(e), then summary judgment, if appropriate, shall be entered against the party. *Id.*; *State v. Shama Resources Ltd. Partnership*, 127 Idaho 267, 270, 899 P.2d 977, 980 (1995). A mere scintilla of evidence or only a slight doubt as to the facts is insufficient to withstand summary judgment; there must be sufficient evidence upon which a jury could reasonably return a verdict for the party opposing summary judgment. *Corbridge v. Clark Equip. Co.*, 112 Idaho 85, 87, 730 P.2d 1005, 1007 (1986); *Petricevich v. Salmon River Canal Co.*, 92 Idaho 865, 871, 452 P.2d 362, 368 (1969).

FACTUAL BACKGROUND AND INTRODUCTION

This case arises from the injuries sustained by Plaintiff on September 27, 2010 when he was shot by Gerald (Durk) Simpson. Mr. Simpson has been in and out of the custody of the state and has spent some amount of time at State Hospital South. The State terminated its treatment of Mr. Simpson on July 1, 2010. After the shooting, criminal charges were instituted against Mr. Simpson and he was again placed in State Hospital South. These charges were eventually dismissed. A guardianship of Mr. Simpson was later established with Mr. Simpson’s sister, Susan Simpson, appointed to serve as his guardian.

Plaintiff sets forth several causes of action in his complaint. Specifically, in relation to the State of Idaho, Plaintiff makes a request for a declaration that his rights as a crime victim were violated, an injunction requiring the state to abide by Idaho’s victim’s rights laws and a claim for negligence against the State for ceasing supervision of Mr. Simpson. Plaintiff argues that the

MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 3

State is responsible for the actions of Mr. Simpson because the State "assumed responsibility" for Mr. Simpson. As will be discussed below, not only is there a lack of an identifiable duty, the Idaho Tort Claims Act precludes liability in this case as a matter of law. Likewise, Idaho Code provisions and the State Constitution make it clear that the victim's rights provisions contained therein do not give rise to a private cause of action.

DISCUSSION

In the case at hand, Plaintiff cannot establish liability against the State. Specifically, the State is immune from liability under the Tort Claims Act and the victim's rights provision of the Idaho Code and the State Constitution provide no civil cause of action.

1. The State is Immune Under the Tort Claims Act.

I.C. § 6-904 provides in part:

A governmental entity and its employees while acting within the course and scope of their employment and without malice or criminal intent shall not be liable for any claim which:

1. Arises out of any act or omission of an employee of the governmental entity exercising ordinary care, in reliance upon or the execution or performance of a statutory or regulatory function, whether or not the statute or regulation be valid, *or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a governmental entity or employee thereof, whether or not the discretion be abused.*

I.C. § 6-904 (emphasis supplied).

"The test for determining the applicability of discretionary function immunity looks at the nature of the conduct." *Brooks v. Logan*, 127 Idaho 484, 488, 903 P.2d 73, 77 (1995). "Routine matters not requiring evaluation of broad policy factors will likely be 'operational,' whereas decisions involving a consideration of the financial, political, economic, and social effects of a

particular plan are likely 'discretionary' and will be accorded immunity." *Hunter v. Dep't of Corr.*, 138 Idaho 44, 48, 57 P.3d 755, 759 (2002).

In *Brooks* the plaintiffs brought a claim contending that a school district should be liable in a wrongful death claim for the district's failure to institute a suicide prevention program. *Brooks*, 127 Idaho at 488, 903 P.3d at 77. The Idaho Supreme Court held that "the decision to implement a suicide prevention program" fell within the discretionary function which is entitled to immunity under I.C. § 904(1). *Id.*

In the case before the Court, the Plaintiffs complain that they suffered injury due to the State's release and failure to supervise Mr. Simpson. However, the decision to release Simpson was in large measure due to financial constraints place upon Health and Welfare and the State of Idaho. See *Chadwick Affidavit* Exhibits A and C. The Idaho Legislature reduced the budget to the Idaho Department of Health and Welfare by \$36,550,600.00. Additionally, there was a resulting decrease in federal matching funds. See *Affidavit of Jodi Osborn*. The internal documents clearly show that decisions were made in response to funding and available resources. As the decision was made in response to decreased funding and resources it falls under the discretionary functions exempted from liability under I.C. § 6-904(1). As such, the State is entitled to immunity and in this regard summary judgment is proper.

Plaintiff asserts in his complaint that the State has "assumed responsibility" for Mr. Simpson regardless of his changing needs and available funding to serve him. See *Complaint* ¶ 49. In the event this Court holds that the decision to release Mr. Simpson does not fall within the discretionary function outlined in I.C. § 6-904(1) and the State did in fact assume responsibility

MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 5

for Simpson, I.C. § 6-904A(2) nevertheless requires dismissal of this case. I.C. § 6-904A provides:

A governmental entity and its employees while acting within the course and scope of their employment and without malice or criminal intent and without reckless, willful and wanton conduct...shall not be liable for any claim which:

2. Arises out of injury to a person or property by a person under supervision, custody or care of a governmental entity....

I.C. § 9-904A clearly exempts the government from actions taken by a person under supervision of the State. *See Harris v. State Dept. of Health & Welfare*, 123 Idaho 295, 847 P.2d 1156 (1993). Even had Mr. Simpson been under the supervision of the state¹, the state is immune from injuries caused by Mr. Simpson while in the care or custody of the State. Moreover, there is no evidence that employees of the State acted recklessly or with willful or wanton conduct.

To the contrary, State employees made the decision to terminate Mr. Simpson's care in a reasonable and measured process. *See Chadwick Affidavit* and attachments. Specifically, the state informed Mr. Simpson of the specific reasons for his termination and provided contact information where he could receive services if necessary. *Chadwick Affidavit Exhibit B*. Clearly, the State is immune in this circumstance and the Plaintiff's claim should be dismissed as a matter of law.

However, in the present case Mr. Simpson was one step further removed. He had been released from the custody of the state and was no longer under the custody or control of the State at the time of the shooting. As such, it cannot be argued that the State was somehow responsible for Mr. Simpson's independent actions after his release. To so hold would put the State in the

¹ It is important to note that at the time of the incident complained of in the current case, Mr. Simpson was no longer in the care of the state.

position of being responsible for someone not under its supervision when *Harris* holds that the State isn't responsible for someone who is under the State's supervision.

If the Plaintiff's theory of liability in this case was accepted there would be no end to governmental liability when coming into contact with the public or in providing services to the public. For example, if a police officer cited a motorist for speeding and then elected to send the motorist on her way, the police department would be responsible for any traffic accident the motorist was later involved in, regardless of the circumstance or date of the subsequent accident.

In sum, if Plaintiff's theory of liability is accepted government entities would be required to continually monitor any and all persons who had been touched by the government to ensure they did no harm to themselves or others. No such duty is placed upon the government by statute or otherwise. Clearly, Plaintiff has no claim with regard to the negligence of the State and as such these claims must be dismissed as a matter of law as no duty to continue to monitor Mr. Simpson existed at the time of this incident.

2. The Victim's Rights Provisions of the Idaho Code and The State Constitution do Not Grant a Cause of Action to Plaintiff.

The Plaintiff also makes numerous allegations that the State has violated the Victims Rights Act and his victims' rights "under the constitution." Plaintiff makes the statement in paragraph one of his complaint that the instant lawsuit "is a lawsuit to enforce the rights of a victim of a violent crime and also to insure that the rights of other victims and potential victims are protected." Plaintiff fails to recognize that no cause of action exists with respect to his victims' rights.

Specifically, I.C. § 19-5306(4) provides in part:

Nothing in this section shall be construed to authorize a court to dismiss a case, to set aside or void a finding of guilt or the acceptance of a plea of guilty...nor be construed as creating a cause of action for money damages, costs or attorneys fees against the state, a county, a municipality, any agency, instrumentality or person....

Clearly, no cause of action is granted due to a violation of the victims rights provisions of I.C. § 19-5306. As such, any claims made by Plaintiff in this regard fail as a matter of law.

Likewise, Article 1 § 22 of the Idaho State Constitution deals with victims' rights. Similar to the statutory provisions above, the Constitution also deals with the issue of civil actions for violation of the victims' rights provisions. In fact, the provision dealing with civil liability is identical to the provision in I.C. § 19-5306 cited above.

As neither the Constitution nor the Idaho Code grants a cause of action to Plaintiff in this regard, any claims regarding the violation of Plaintiff's victim's rights including the requested injunction and the request for declaratory judgment must be dismissed as a matter of law.

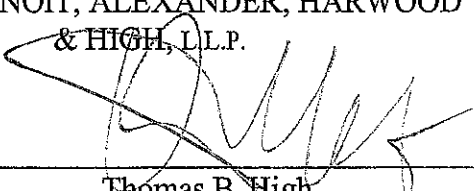
CONCLUSION

For the reasons cited above no cause of action exists against the State and as such it is requested that the court grant the State's motion for summary judgment.

DATED this 26th day of June, 2013.

BENOIT, ALEXANDER, HARWOOD
& HIGH, LLP.

By


Thomas B. High

Attorneys for Defendant State of Idaho

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 26th day of June, 2013, he caused a true and correct copy of the **MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743
(Attorneys for Plaintiff)

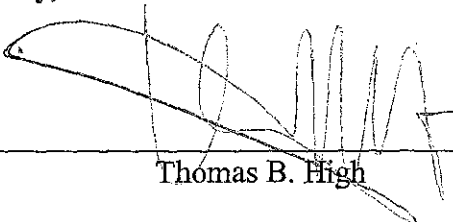
Hand Delivered
U.S. Mail
Fax
Fed. Express

<input type="checkbox"/>
<input checked="" type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

Ian N. Service
Deputy Prosecuting Attorney
Bannock County
P.O. Box P
Pocatello, ID 83205-0050
**(Attorney for Defendant Bannock County,
Idaho)**

Hand Delivered
U.S. Mail
Fax
Fed. Express

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<input type="checkbox"/>
<input type="checkbox"/>



Thomas B. High

Thomas B. High, ISB No. 2430
 Bren E. Mollerup, ISB No. 7959
 BENOIT, ALEXANDER,
 HARWOOD & HIGH, L.L.P.
 126 Second Avenue North
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 Twin Falls, Idaho 83303-0366
 Telephone: (208) 733-5463
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 Email: high@benoitlaw.com
 Email: mollerup@benoitlaw.com
 Attorneys for Defendant State of Idaho
 (16105\Aff in Supp of Summary Judgment\BEM\ka)

FILED
 BANNOCK COUNTY
 13 JUN 28 AM 11:10
 BY
 DEPUTY

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RYAN M. MITCHELL,

Plaintiff,

v.

GERALD DURK SIMPSON, an individual,
 STATE OF IDAHO, a governmental entity,
 and BANNOCK COUNTY, IDAHO, a
 political subdivision, SUSAN SIMPSON, as
 Conservator and Guardian of Gerald Durk
 Simpson, and DOES 1-25,

Defendants.

Case No. CV-12-4124-OC

**AFFIDAVIT IN SUPPORT OF
 MOTION FOR SUMMARY
 JUDGMENT**

STATE OF IDAHO)
) ss.
 County of Bannock)

Sue Chadwick being first duly sworn on oath, deposes and says:

1. I am an employee of the State of Idaho. I am over the age of eighteen years of age

AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 1

and make this Affidavit of my own personal knowledge.

2. In my position as Office Services Supervisor at the State of Idaho, I have become familiar with the documents maintained by the Department of Health & Welfare.

3. Attached hereto as Exhibit "A" is a true and correct copy of an interdepartmental document entitled July 2010 Closure of ACT Team Clients and dated October 8, 2010. This document is maintained in the normal course of business at the Idaho Department of Health & Welfare.

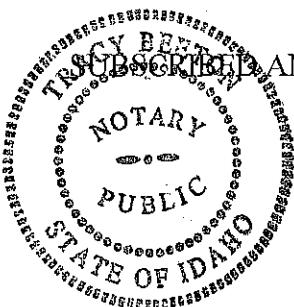
4. Attached hereto as Exhibit "B" is a true and correct copy of a June 23, 2010, letter to Durk Simpson. This document is maintained in the files in the normal course of business at the Idaho Department of Health & Welfare.

5. Attached hereto as Exhibit "C" is a true and correct copy of an interdepartmental email regarding department resources. This document is maintained in the files in the normal course of business at the Idaho Department of Health & Welfare.

6. I certify that the attached documents are true and correct copies of documents maintained in the ordinary course and scope of business of the State of Idaho Department of Health & Welfare.

DATED this 18th day of June, 2013.

Sue Chadwick
SUE CHADWICK



SUBSCRIBED AND SWORN to before me this 18th day of June, 2013.

Tracy Beeton
NOTARY PUBLIC
Residing at: Bannock County
My Commission Expires: April 9, 2017

AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 2

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 21st day of June, 2013, he caused a true and correct copy of the **AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743
(Attorneys for Plaintiff)

Hand Delivered ☐
U.S. Mail ☒
Fax ☐
Fed. Express ☐

Ian N. Service
Deputy Prosecuting Attorney
Bannock County
P.O. Box P
Pocatello, ID 83205-0050
**(Attorney for Defendant Bannock County,
Idaho)**

Hand Delivered ☐
U.S. Mail ☒
Fax ☐
Fed. Express ☐



Thomas B. High

EXHIBIT “A”

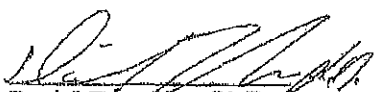
July 2010 Closure of ACT Team Clients:
Today's Date - 10/8/2010

The purpose of this document is to describe the selection process of clients for closure and the steps that were taken in order to reduce the possibility of harm to clients and/or the community. In essence, the closure came secondary to a multi-month set of discussions between the acting program manager, previous program manager, and regional management team members, in response to concerns that the loss of staff members through layoffs and hiring freezes, as well as the increasing demand of individuals with community mental health needs, was leaving the department in the difficult position of potentially being (1) ineffective, (2) in danger of losing medication availability, and (3) being understaffed and underfunded in such a manner that continuing to operate without prioritizing those with serious mental illness, and those without funding, was likely to lead to global deterioration for all open clients. Restated, after non-essential budget areas were eliminated, the budget reduction required marked cuts in the personnel budget. The number of clinicians and case managers was reduced; however, the number of clients that were being treated did not lessen. In order to provide sufficiently effective treatment to the Adult Mental Health Program's case load, employees were required to work far more than 40 hours a week. As a result of this, employees and clients were evidencing signs of worsening mental health symptoms. Therefore, it was determined that, since an increase in funding was unlikely, the number of clients treated at HDC would need to be reduced in order to have a sustainable workload.

Following the decision to reduce the number of clients seen at HDC, the level of mental illness severity and individuals' ability to pay for services (either through benefits or self-pay) were examined for each open client. Numerous staffing meetings were held to investigate each individual client's situation. Each of the teams engaged in this process.

Specifically, the ACT Team, who at the time was being supervised by Daniel Traugher, closely examined the open clients. Each client was staffed on several occasions. In fact, most of the ACT Team client cases were staffed multiple times a week during the six weeks leading up to the closure. Of note, is that ACT Team clients who were ultimately closed had ability to pay for private services, access to services, and demonstrated a level of stability that indicated ACT Team level services were not necessary. Further, if an individual appeared to meet these criteria and yet a clinician, case manager, or the client themselves felt strongly that discontinuing ACT Team services would result in serious problems, they were removed from the possible closure list (which occurred in several cases).

Of the 70 clients closed at HDC during that process, 11 of them were ACT Team clients. As a safety mechanism initiated by ACT Team members, many of those 11 received follow-up visits during the next several weeks to determine how well they were transitioning to private providers. In addition, our peer specialist played an important role in this process. First, her phone number was made available for former clients to contact if they were having problems transitioning in to private services. In those situations, she would either help them resolve the problems or present them to the appropriate team at HDC to be considered for re-admission for services. Secondly, specifically for former ACT Team clients, our peer specialist remained in contact with and continued to visit those who were accepting of her help (this activity has continued through the present time).


Daniel Traugher, Ph.D.
ACT Team Supervisor

10/8/10
Date

STATE 00120

EXHIBIT “B”



IDAHO DEPARTMENT OF HEALTH & WELFARE

C. L. "BUTCH" OTTER - Governor
RICHARD M. ARMSTRONG - Director

DIVISION OF BEHAVIORAL HEALTH
421 Memorial Dr.
Pocatello, ID 83201
PHONE 208-234-7900
FAX 208-230-6328

June 23, 2010

Durk Simpson
610 E. Halliday #2
Pocatello, ID 83221

Dear Durk:

This letter is written regarding your mental health treatment at the Human Development Center. In order to provide optimal treatment, we have been re-assessing our available services and the level of need for current clients of the Adult Mental Health program. Part of this evaluation is to also consider how closely we are following the eligibility guidelines prescribed to us by our legislative body or state congress. The focus of the Adult Mental Health program is to engage in relatively brief crisis intervention and stabilization, rather than long-term treatment. We recognize that, due to your symptoms, ongoing treatment would probably be of benefit. Unfortunately, as of now, it appears that you do not meet criteria for our intensive level of services. As this is the case, we wanted to inform you that we will be closing your file.

The Department of Health and Welfare's Adult Mental Health program is mandated to provide assessment and treatment of individuals who pose immediate life or death complications, or other equally serious problems. Upon admittance to the Adult Mental Health program a client can receive short-term crisis intervention and treatment. Importantly, if you feel that our assessment of your current need is inaccurate, or if you reach our crisis intervention criteria in the future, we would encourage you to contact us for a screening interview and a re-assessment of your case.

To assist in the transition of your services, we hope to offer a few aids. We will be including a number of mental health treatment sources in the community with this letter (some that take benefits, and some that specialize in treating individuals without benefits). Also, Martha Garrett, a peer specialist, is available by appointment for consultation to help individuals connect with community services. She can be contacted at (208) 234-7915.

Finally, if you are currently receiving medications from Adult Mental Health, please contact your nurse provider immediately to be sure a transition plan is created to allow you the smoothest transition away from our agency and into your new treatment provider. The nursing staff includes Rick Bigler and Tonja Knapp, and they can also be reached at (208) 234-7900.

For further information or for referral options we can be contacted at 234-7900.

Sincerely,

Heath Sommer, Ph.D.
Region VI Program Lead

STATE 00426

We understand how stressful it can be to change from one mental health provider to another in the middle of the recovery process. We hope this list of providers, who are high quality and low cost, will ease your transition.

Pocatello Free Clinic
729 Washington
Pocatello, ID 83201
Phone: 233-6245

Pocatello Health West Clinic
845 W. Center St. Suite 200
Pocatello, ID 83204
Phone: 232-6260

ISU Psychology Clinic
921 S. 8th Ave.
Pocatello, ID 83209
Phone: 282-2129

STATE 00127

EXHIBIT “C”

Beeton, Tracy - Reg6

From: Chadwick, Sue - Reg6
Sent: Tuesday, November 16, 2010 4:20 PM
To: Sessions, Tracey G. - SHS
Subject: FW: Patient closures and some thoughts on our moving forward from Heath Sommer
Importance: High

Here it is. This email was sent the day before the closure letters were actually mailed.

Sue Chadwick
 Office Services Supervisor

From: Chadwick, Sue - Reg6
Sent: Thursday, June 24, 2010 12:35 PM
To: Berglund, Myron - Reg6; Bloxham, Richard - Reg6; Clark, Brandon W. - Reg6; Collaer-Muzzo, Christine - Reg6; Cumber, Craig - Reg6; Locke, Casey - Reg6; Peterson, Dawn M. - Reg6; Axford, Ed - Reg6; Bigler, Richard D. - Reg6; Bills, Kebal D. - Reg6; Busenbark, Jamie - Reg6; Chadwick, Sue - Reg6; Cottrell, Cindy - Reg6; Eckersall, Will J. - Reg6; Hapke, Karon - Reg6; Jones, Shannon - Reg6; Knapp, Tonja M. - Reg6; Miller, Anne - Reg6; Sommer, Heath - Reg6; Traugher, Daniel - Reg6; Weatherspoon, David - Reg6; Brinker, Hans B. - Reg6; Busacker, Kevin - Reg6; Chadwick, Sue - Reg6; Germer, Deidra - Reg6; Schuder, Kim - Reg6; Wilson, Cindy L. - Reg6; Williams, Sy B. - Reg6; Boyd, Norma - Reg6; Browning, Mindy - Reg6; Call, Brent - Reg6; Carter, Colby - Reg6; Clark, Stephanie - SHS; Cox, Lila - Reg6; Garrett, Martha - Reg6; Gibson, Lyn - Reg6; Hess, Jennifer - Reg6; Isaacson, Justice - Reg6; Jensen, Denise - Reg6; Konecky, Brian - Reg6; Legarreta, Margaret - Reg6; Lindsey, Katl - Reg6; Martin, Jessica - Reg6; Martinez, JoAnne - Reg6; McCall, Amy - Reg6; Meiners, Erika - Reg6; Rasmussen, Kimberly - Reg6; Russell, Josie - Reg6; Schmidt, Darren - Reg6; Strain, Misty - Reg6; Stratton, Hilary - Reg6; Taylor, Kinsey - Reg6; Van Wyk, Patrick - Reg6; Warren, Mallori - Reg6; Weiss, April - Reg6; Whitaker, Brandi - Reg6
Cc: Weers, Ritchie C. - Reg6
Subject: Patient closures and some thoughts on our moving forward from Heath Sommer
Importance: High

As you know, for more than two years as a management and regional treatment team there has been much discussion about how to move forward with the diminished resources we have and yet increasing demand. Sometimes it is the job of a manager, after listening carefully to the many thoughts from all who speak them, to make a decision as best he or she can with the hope that such a decision will be for the betterment of the corporation and its consumers. After spending three years studying in depth the statistical and human interest data comprising the adult mental health program, I have become convinced of a few things:

1. We do not have enough clinical or technical support staff to meet the current demand we are experiencing
2. Because of our client-to-staff ratio we are providing less than the standard of treatment to nearly all individuals in our Programs
3. We are not complying with mandatory paperwork and billing guidelines
4. We are not complying with mandatory legal guidelines
5. We are not in compliance with our own Departmental guidelines
6. Staff are overworking/ working through breaks and lunches, on holidays and weekends, to attempt to keep up with their duties
7. Staff are experiencing increasing distress and demoralization given the rigorous work load and demands

STATE 00124

4/15/2011

I recognize that staff may not all have the same or shared viewpoint with the above, and I suppose that sometimes it is difficult when someone—anyone—makes a final decision regarding patient closures, however, the time has come that the decision has been made and beginning next week many individuals will receive letters from this department, with my signature affixed, informing them that they are no longer eligible for services at the IDHW.

As we move forward with this decision, hopefully staff will consider:

1. This is not a decision that was caused by budget cuts alone. Yes less personnel and funding have reduced the amount of service we can do, but Health and Welfare has always been a short term treatment provider...we just have historically had difficulty following our own policies. Quoting from our own Region VI mental health contract, Region VI only provides treatment to "acute psychiatric crisis that may result in inpatient psychiatric care...only short term treatment or intervention not to exceed 120 days is provided."
2. Clients who are being closed may access Martha Garrett for an unlimited time to help place them in community referral sources
3. Clients are being advised that if they disagree they may contact IDHW to appeal their decision, although the decision to allow a client to stay open **MUST BE APPROVED BY A MANAGER**
4. Clients are, of course, always welcome to schedule a new intake at any time, if their symptoms worsen.

Please, if any staff has a personal concern not addressed in this email, feel free to come visit with me, and I would be happy to speak with you more. Personally, I believe that while a heavy decision, this is the most effective, humane direction for our region to proceed at this time, and I thank you for your patience and willingness to serve others during these last difficult years we have all experienced. I believe, and time will be the judge, that the decision we make today, will best preserve what we do for the largest amount of people toward meaningful and sustained recovery for persons with mental illness within our borders.

Respectfully,

Heath Sommer

Heath Sommer, Ph.D.
Program Lead
State of Idaho Department of Health & Welfare
Region VI Division of Behavioral Health
421 Memorial Drive
Pocatello, ID 83201
(208) 234-7900 phone
(208) 236-6328 fax

Sue Chadwick
Office Services Supervisor

STATE 00125

4/15/2011

Thomas B. High, ISB 2430
 Bren E. Mollerup, ISB 7959
 BENOIT, ALEXANDER,
 HARWOOD & HGH, L.L.P.
 126 Second Avenue North
 P.O. Box 366
 Twin Falls, Idaho 83303-0366
 Telephone: (208) 733-5463
 Fax: (208) 734-1438
 Email: high@benoitlaw.com
 Email: mollerup@benoitlaw.com
 Attorneys for Defendant State of Idaho

FILED
 13 JUN 28 AM 11:11
 DEPUTY

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RYAN M. MITCHELL,	)	Case No. CV-12-4124-OC
)	
Plaintiff,)	
)	
v.	)	AFFIDAVIT OF JODI OSBORN
)	
GERALD DURK SIMPSON, an individual,)	
STATE OF IDAHO, a governmental entity,)	
and BANNOCK COUNTY, IDAHO, a)	
political subdivision, SUSAN SIMPSON, as)	
Conservator and Guardian of Gerald Durk)	
Simpson, and DOES 1 - 25,)	
)	
Defendants.)	

STATE OF IDAHO)
) ss.
 County of Ada)

JODI OSBORN, being duly sworn upon oath, deposes and states as follows:

AFFIDAVIT OF JODI OSBORN - 1

1. I am a resident of Boise, Ada County, Idaho.
2. I am the Financial Executive Officer for the Idaho Department of Health and Welfare (Department). I have been in this position for two years, seven months. My key responsibilities are to manage the financial staff and operations for the Department.
3. The Idaho Legislature cut the Department's budget appropriation between State Fiscal Year 2009 and State Fiscal Year 2010 by \$36,550,600, which does not reflect the resulting decrease in the Department's federal matching funds.

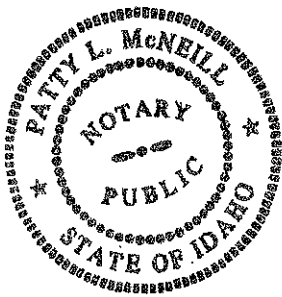
Further, your affiant sayeth naught.


DATED this 26th day of June, 2013.


JODI OSBORN

SUBSCRIBED AND SWORN TO Before me, the undersigned Notary Public in and for said County and State, on this 26th day of June, 2013.

(SEAL)




Notary Public for Idaho
Residing at: Boise, ID
My Commission Expires: June 30, 2015

CERTIFICATE OF MAILING

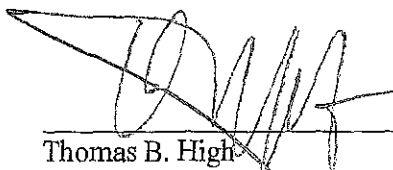
The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 26th day of June, 2013, he caused a true and correct copy of the **AFFIDAVIT OF JODI OSBORN** to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743
(Attorneys for Plaintiff)

Hand Delivered	<input type="checkbox"/>
U.S. Mail	<input type="checkbox"/>
Fax	<input type="checkbox"/>
Fed. Express	<input type="checkbox"/>

Ian N. Service
Deputy Prosecuting Attorney
Bannock County
P.O. Box P
Pocatello, ID 83205-0050
(Attorney for Defendant Bannock County,
Idaho)

Hand Delivered	<input type="checkbox"/>
U.S. Mail	<input type="checkbox"/>
Fax	<input type="checkbox"/>
Fed. Express	<input type="checkbox"/>


Thomas B. High

Thomas B. High, ISB No. 2430
 Bren E. Mollerup, ISB No. 7959
 BENOIT, ALEXANDER,
 HARWOOD & HIGH, L.L.P.
 126 Second Avenue North
 P.O. Box 366
 Twin Falls, Idaho 83303-0366
 Telephone: (208) 733-5463
 Fax: (208) 734-1438
 Email: high@benoitlaw.com
 Email: mollerup@benoitlaw.com
 Attorneys for Defendant State of Idaho
 (16105/ STATEMENT OF UNDISPUTED FACTS/BEM)

FILED
 BANNOCK COUNTY
 13 JUN 28 AM 11:11
 BY
 DEPUTY

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RYAN M. MITCHELL,

Plaintiff,

v.

GERALD DURK SIMPSON, an individual,
 STATE OF IDAHO, a governmental entity,
 and BANNOCK COUNTY, IDAHO, a
 political subdivision, SUSAN SIMPSON, as
 Conservator and Guardian of Gerald Durk
 Simpson, and DOES 1-25,

Defendants.

Case No. CV-12-4124-OC

**STATEMENT OF UNDISPUTED
 FACTS**

COMES NOW, the above entitled defendant State of Idaho, by and through its attorneys of
 record, Benoit, Alexander, Harwood & High, LLP, and submits this Statement of Undisputed Facts,
 in support of its Motion for Summary Judgment.

STATEMENT OF UNDISPUTED FACTS - 1

1. Durk Simpson was released from the care of the Idaho Department of Health and Welfare on June 23, 2010. *See Chadwick Affidavit Exhibit B.*
2. On September 27, 2010 Durk Simpson shot the Plaintiff, Ryan Mitchell, in the back. *See Complaint ¶ 11.*
3. At the time Mr. Simpson shot Mr. Mitchell he was no longer in the care of the State of Idaho. *See Chadwick Affidavit Exhibit B.*
4. Funding to provide services through the Idaho Department of Health and Welfare was cut by \$36,550,600.00 between fiscal year 2009 and fiscal year 2010. This cut in funding reduced the amount of mental health services that could be provided by the State. *Chadwick Affidavit Exhibit C; Affidavit of Jodi Osborn.*
5. The decision to stop providing services to Mr. Simpson was based, in large measure, on decreases in funding and resources available to the Department of Health and Welfare. *Chadwick Affidavit Exhibits A and C; Affidavit of Jodi Osborn.*

DATED this 26th day of June, 2013.

BENOIT, ALEXANDER, HARWOOD
& HIGH, L.L.P.

By


Thomas B. High

Attorneys for Defendant State of Idaho

STATEMENT OF UNDISPUTED FACTS - 2

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 26th day of June, 2013, he caused a true and correct copy of the **STATEMENT OF UNDISPUTED FACTS** to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743
(Attorneys for Plaintiff)

Hand Delivered
U.S. Mail
Fax
Fed. Express

☐
☒
☐
☐

Ian N. Service
Deputy Prosecuting Attorney
Bannock County
P.O. Box P
Pocatello, ID 83205-0050
**(Attorney for Defendant Bannock County,
Idaho)**

Hand Delivered
U.S. Mail
Fax
Fed. Express

☐
☒
☐
☐



Thomas B. High

Thomas B. High, ISB No. 2430
 Bren E. Mollerup, ISB No. 7959
 BENOIT, ALEXANDER,
 HARWOOD & HIGH, L.L.P.
 126 Second Avenue North
 P.O. Box 366
 Twin Falls, Idaho 83303-0366
 Telephone: (208) 733-5463
 Fax: (208) 734-1438
 Email: high@benoitlaw.com
 Email: mollerup@benoitlaw.com
 Attorneys for Defendant State of Idaho

FILED
 BANNOCK COUNTY
 CLERK OF THE COURT
 2013 JUL 17 AM 10:05
 BY
 DEPUTY CLERK

(16105\Discovery\Notice of Service (1st Supple Ans to Plain 1st Set of Interrogs to Def & 1st Supple Res to Plain 1st Set of Doc Req to Def)\TBH\ka)

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

* * * * *

RYAN M. MITCHELL,	)	Case No. CV-12-4124-OC
)	
Plaintiff,)	
)	
v.	)	NOTICE OF SERVICE OF
	)	DISCOVERY DOCUMENTS
GERALD DURK SIMPSON, an individual,)	
STATE OF IDAHO, a governmental entity,)	
and BANNOCK COUNTY, IDAHO, a)	
political subdivision, SUSAN SIMPSON, as)	
Conservator and Guardian of Gerald Durk)	
Simpson, and DOES 1-25,)	
)	
Defendants.)	

* * * * *

Pursuant to Rules 33 and 34 of the Idaho Rules of Civil Procedure, notice is hereby given
 by the undersigned party that the original and a copy of **FIRST SUPPLEMENTAL ANSWERS**

NOTICE OF SERVICE OF DISCOVERY DOCUMENTS - 1

TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANT STATE OF IDAHO; FIRST SUPPLEMENTAL RESPONSES TO PLAINTIFF'S FIRST SET OF DOCUMENT REQUESTS TO DEFENDANT STATE OF IDAHO; and PRIVILEGE AND STATUTORY EXEMPTION LOG were served upon the following attorney for the Plaintiff, by placing the same in the U.S. mail with postage prepaid thereon to:

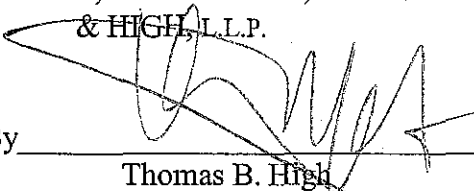
William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743

The original documents are being sent to Plaintiff's counsel to be retained in his file.

DATED this 15th day of July, 2013.

BENOIT, ALEXANDER, HARWOOD
& HIGH, L.L.P.

By


Thomas B. High

Attorneys for Defendant State of Idaho

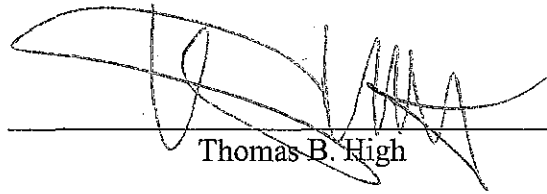
CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 15th day of July, 2013, he caused a true and correct copy of the **NOTICE OF SERVICE OF DISCOVERY DOCUMENTS** to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743
(Attorneys for Plaintiff)

Hand Delivered
U.S. Mail
Fax
Fed. Express

<input type="checkbox"/>
<input checked="" type="checkbox"/>
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Thomas B. High

FILED
BANNOCK COUNTY
CLERK OF THE COURT
2013 JUL 18 AM 10:01
BY DEPUTY CLERK

* * * * *

Case No. CV-12-4124-OC

NOTICE OF HEARING

**(Defendant, State of Idaho's Motion
for Summary Judgment)**

DATE: August 5, 2013
TIME: 3:00 p.m.

* * * * *

Stephen S. Dunn at the above-named Court at the Courthouse, in the City of Pocatello, County of

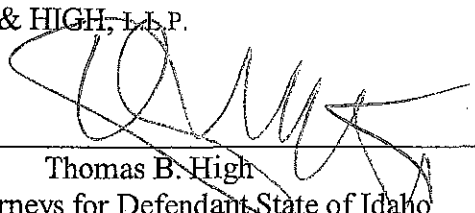
116 of 503

Bannock, State of Idaho, the above-named Defendant, State of Idaho, will call up and present for disposition by the Court its **MOTION FOR SUMMARY JUDGMENT** previously filed with this Court.

DATED this 16th day of July, 2013.

BENOIT, ALEXANDER, HARWOOD
& HIGH, L.L.P.

By


Thomas B. High
Attorneys for Defendant State of Idaho

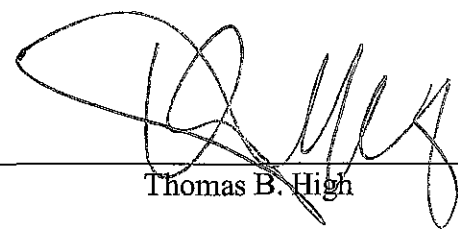
CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 16th day of July, 2013, he caused a true and correct copy of the **NOTICE OF HEARING** to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743
(Attorneys for Plaintiff)

Hand Delivered
U.S. Mail
Fax
Fed. Express

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<input type="checkbox"/>
<input type="checkbox"/>


Thomas B. High

Thomas B. High, ISB No. 2430
 Bren E. Mollerup, ISB No. 7959
 BENOIT, ALEXANDER,
 HARWOOD & HIGH, L.L.P.
 126 Second Avenue North
 P.O. Box 366
 Twin Falls, Idaho 83303-0366
 Telephone: (208) 733-5463
 Fax: (208) 734-1438
 Email: high@benoitlaw.com
 Email: mollerup@benoitlaw.com
 Attorneys for Defendant State of Idaho
 (16105\Summary Judgment\Amended Notice of Hearing\TBH\ka)

FILED
 BANNOCK COUNTY
 CLERK OF THE COURT
 2013 JUL 22 AM 11:08
 BY
 DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RYAN M. MITCHELL,
 Plaintiff,

v.

GERALD DURK SIMPSON, an individual,
 STATE OF IDAHO, a governmental entity,
 and BANNOCK COUNTY, IDAHO, a
 political subdivision, SUSAN SIMPSON, as
 Conservator and Guardian of Gerald Durk
 Simpson, and DOES 1-25,
 Defendants.

Case No. CV-12-4124-OC

AMENDED NOTICE OF HEARING

**(Defendant, State of Idaho's Motion
 for Summary Judgment)**

DATE: August 12, 2013

TIME: 4:00 p.m.

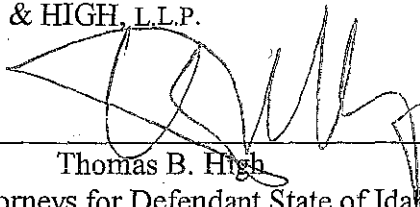
PLEASE TAKE NOTICE that on **Monday, the 12th day of August, 2013, at the hour of
 4:00 o'clock p.m.** of that day, or as soon thereafter as counsel can be heard, before the Honorable
 Stephen S. Dunn at the above-named Court at the Courthouse, in the City of Pocatello, County of
 AMENDED NOTICE OF HEARING - 1

Bannock, State of Idaho, the above-named Defendant, State of Idaho, will call up and present for disposition by the Court its **MOTION FOR SUMMARY JUDGMENT** previously filed with this Court.

DATED this 18th day of July, 2013.

BENOIT, ALEXANDER, HARWOOD
& HIGH, L.L.P.

By


Thomas B. High
Attorneys for Defendant State of Idaho

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 18th day of July, 2013, he caused a true and correct copy of the **AMENDED NOTICE OF HEARING** to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743
(Attorneys for Plaintiff)

Hand Delivered
U.S. Mail
Fax
Fed. Express

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<input checked="" type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>


Thomas B. High

ORIGINAL

FILED
BANNOCK COUNTY
CLERK OF THE COURT
2013 JUL 26 PM 12:24
BY ADH
DEPUTY CLERK

WILLIAM L. MAUK (ISB #1825)
BRIANE NELSON MITCHELL (ISB #2346)
MAUK & BURGOYNE
515 South 6th Street
Post Office Box 1743
Boise, Idaho 83701-1743
Telephone: (208) 345-2654
Facsimile (208) 345-3319
nels@maukburgoyne.com

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

RYAN M. MITCHELL,

Plaintiff,

vs.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity, and
BANNOCK COUNTY, IDAHO, a political
subdivision, SUSAN SIMPSON, as
Conservator and Guardian of Gerald Durk
Simpson, and DOES 1-25,

Defendants.

Case No. CV 12-4124 OC

**NOTICE OF RULE 30(b)(6)
DEPOSITION**

Date: August 13, 2013

Time: 9:00 a.m.

TO: Defendant State of Idaho and its Attorneys of Record.

YOU ARE HEREBY NOTIFIED pursuant to Rule 30(b)(6) of the Idaho Rules of Civil Procedure that on August 13, 2013, at 9:00 a.m. and continuing thereafter until completed, at the AmeriTel Inn, 1440 Bench Road, Pocatello, ID 83201, Plaintiff acting through counsel will take the deposition of the person or persons designated by the State of Idaho.

Definitions

1. "Mr. Mitchell" refers to Plaintiff Ryan Mitchell.

NOTICE OF RULE 30(b)(6) DEPOSITION - 1

2. "Simpson" refers to Defendant Gerald Durk Simpson, and anyone acting on his behalf including attorneys, agents, conservators and guardians.

3. "Bannock County" refers to Defendant Bannock County, its officers, directors, employees, agents, attorneys, consultants and any other person or entity purporting to act on its behalf, including the Bannock County Prosecuting Attorney's Office.

4. "Idaho Department of Health and Welfare" refers to the Department's officers, directors, employees, agents, attorneys, consultants and any other person or entity purporting to act on its behalf.

5. "Idaho Attorney General's Office" refers to the Idaho State Attorney General and all employees of that office, as well as all agents, attorneys, consultants and anyone else purporting to act for or on behalf of the Idaho State Attorney General.

6. "State" or "State of Idaho" refers to the Defendant State of Idaho and all of its officers, employees, departments, agents, consultants and anyone else purporting to act for or on behalf of the State including but not limited to the Department of Health and Welfare and the Idaho Attorney General's Office.

7. "Relate(s) to," "related to" or "relating to" means, in addition to its customary and usual meaning: of or concerning, pertaining to, consisting of, bearing upon, containing, describing, evidencing, constituting, reflecting, or having any logical or factual connection with the subject matter dealt with or alluded to in the request.

8. "Communicate," "communication" and "communications" mean any email, contact, oral or written, formal or informal, at any time or place and under any circumstances, whereby information of any nature was recorded, transmitted, or transferred, including any meeting, conference, face-to-face conversation, telephone conversation, or conference or

NOTICE OF RULE 30(b)(6) DEPOSITION - 2

communication used by any media, as well as any written, taped, recorded, or electronic communication of any kind whatsoever.

9. The term "document" and its plural shall refer to anything that would be a "writing" or "recording," as defined in Rule 1001(1) of the Idaho Rules of Evidence, or a "document," as defined in Rule 34(a) of the Idaho Rules of Civil Procedure, and refers to all handwritten, typed, printed, electronic, or otherwise visually or aurally reproduced materials, emails, and all originals and copies that contain any notes, handwriting, underscoring, deletions, or that in any way otherwise differ from the original thereof. Such documents include but are not limited to: (1) all the written, printed, recorded, graphic, or sound reproductions, however produced, including but not limited to correspondence, memoranda, notes, telegrams, notebooks, diaries, desk calendars, charts, photographs, screen shots, and records of any kind; (2) all electronically stored information ("ESI"), computer-readable data compilations, including but not limited to tapes, diskettes, card, cassettes, electronic mail, and all other electronic or mechanical devices which contain information stored in mainframe and personal computers or devices (such as PDAs/cell phones), offsite storage or accessible "online"; (3) all originals, drafts, and copies that differ in any respect from the original; all marginal comments that appear on such documents; and all transcripts or recordings of such documents; and all attachments, enclosures, or documents affixed or referred to in such documents.

10. "Describe" means a detailed description of all facts, actions or inactions, including the relevant dates and the identity of any documents used in responding to the question.

11. "Identify" a person means providing the name, position, address, telephone number and email address for the person. "Identify" a location means providing the name and

address for the location. "Identify" a court proceeding means providing the case name, case number, court where the action was filed, and the date that the action was filed.

Matters for Examination

Pursuant to Rule 30(b)(6) of the Idaho Rules of Civil Procedure, Defendant State of Idaho is requested to designate one or more of its officers, employees or other persons to provide testimony on the State's behalf on the following matters:

1. The release (or potential release) of Simpson and all communications relating to that topic.
2. The dismissal (or potential dismissal) of criminal charges against Simpson and all communications relating to that topic.
3. The State of Idaho's decision to stop providing help or services to Simpson during the Summer of 2010.
4. Any effort the State of Idaho made to place Simpson in a new program during the Summer of 2010.
5. Simpson's propensity for violence and any discussions or communications relating to that topic.
6. Any discussions or communications relating to Simpson's possession or use of guns.
7. Any discussions or communications relating to the photograph of Simpson walking with a gun.
8. Any discussions or communications relating in any way to whether Simpson was a threat to others.
9. The State of Idaho's statements that:

1. We do not have enough clinical or technical support staff to meet the current demand we are experiencing
2. Because of our client-to-staff ratio we are providing less than the standard of treatment to nearly all individuals in our Programs
3. We are not complying with mandatory paperwork and billing guidelines
4. We are not complying with mandatory legal guidelines
5. We are not in compliance with our own Departmental guidelines

And that State employees should consider that:

This is not a decision that this was caused by budget cuts alone.

10. All services and assistance provided to Simpson through the Idaho Assertive Community Treatment Program.

11. The State of Idaho's obligation to respect the victim rights of Mr. Mitchell.

12. The State of Idaho's investigation of the shooting of Mr. Mitchell on September 27, 2010.

13. Simpson's acquisition, possession or use of guns.

14. The State of Idaho's response to subpoenas and discovery requests made in the Bannock County Court action against Simpson.

15. The conservator and/or guardianship proceeding initiated on behalf of Simpson.

16. Any State policy, guidelines or instructions relating to the initiation of guardian and/or conservatorship proceedings on behalf of individuals facing criminal charges.

17. The 32 conservatorship/guardianship proceedings the State has initiated for patients at State Hospital South or clients of Adult Mental Health in Region Six.

18. The reasons the State stopped providing services or support to Simpson in the Summer of 2010.

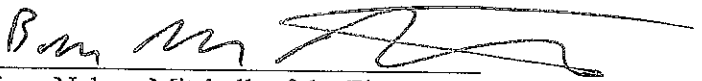
NOTICE OF RULE 30(b)(6) DEPOSITION - 5

19. The support and services that the State provided to Simpson prior to the Summer of 2010.
20. The care and treatment that the State of Idaho has provided to Simpson.
21. The termination of Dr. Heath Sommer's employment and his relationship with the State.
22. The fifty-nine separate times that State employees reviewed or changed Simpson's State records (as well as the reason for reviewing or changing) during the four days after Simpson shot Mr. Mitchell.

This deposition will be taken pursuant to the Idaho Rules of Civil Procedure.

Dated this 25th day of July, 2013.

MAUK & BURGOYNE

By 
Briane Nelson Mitchell, of the Firm,
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of July, 2013, I caused a true and correct copy of the above and foregoing instrument to be served upon the following individuals in the manner indicated below:

Susan Simpson
765 Channing Ave.
Palo Alto, CA 94301

☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

*As Conservator and Guardian of
Gerald Durk Simpson*

Thomas B. High
Bren E. Mollerup
Benoit, Alexander, Harwood & High, LLP
126 Second Avenue North
P.O. Box 366
Twin Falls, ID 83303-0366

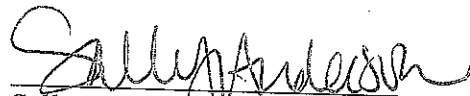
☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

Attorneys for Defendant State of Idaho

Ian N. Service
Bannock County Prosecutor's Office
624 E Center
P.O. Box P
Pocatello, ID 83201

☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

Attorneys for Defendant Bannock County



Sally Anderson
Assistant to Briane Nelson Mitchell

ORIGINAL

WILLIAM L. MAUK (ISB #1825)
BRIANE NELSON MITCHELL (ISB #2346)
MAUK & BURGOYNE
515 South 6th Street
Post Office Box 1743
Boise, Idaho 83701-1743
Telephone: (208) 345-2654
Facsimile (208) 345-3319
nels@maukburgoyne.com

FILED
BANNOCK COUNTY
CLERK OF THE COURT
2013 JUL 26 PM 12:24
BY
DEPUTY CLERK

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

RYAN M. MITCHELL,

Plaintiff,

vs.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity, and
BANNOCK COUNTY, IDAHO, a political
subdivision, SUSAN SIMPSON, as
Conservator and Guardian of Gerald Durk
Simpson, and DOES 1-25,

Defendants.

Case No. CV 12-4124 OC

**NOTICE OF DEPOSITION OF
DR. HEATH SOMMER**

Date: August 14, 2013

Time: 9:00 a.m.

TO: Defendants above-named and their counsel of record.

PLEASE TAKE NOTICE that the Plaintiff will take the testimony on oral examination of **Dr. Heath Sommer**, before a Notary Public or before some other officer authorized by law to administer oaths, on the 14th day of August, 2013, at 9:00 o'clock, a.m., and thereafter from day to day as the taking of the deposition may be adjourned, at the Ameritel Inn, 1440 Bench Road, Pocatello, ID 83201, at which time and place you are notified to appear and take such part in the examination as may be deemed proper.

NOTICE OF DEPOSITION OF DR. HEATH SOMMER - 1

This deposition will be taken pursuant to the Idaho Rules of Civil Procedure.

Dated this 21st day of July, 2013.

MAUK & BURGOYNE

By Brian Mitchell
Briane Nelson Mitchell, of the Firm,
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of July, 2013, I caused a true and correct copy of the above and foregoing instrument to be served upon the following individuals in the manner indicated below:

Susan Simpson
765 Channing Ave.
Palo Alto, CA 94301

☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

*As Conservator and Guardian of
Gerald Durk Simpson*

Thomas B. High
Bren E. Mollerup
Benoit, Alexander, Harwood & High, LLP
126 Second Avenue North
P.O. Box 366
Twin Falls, ID 83303-0366

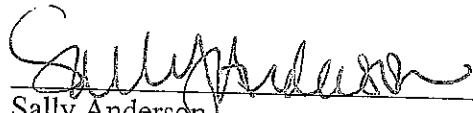
☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

Attorneys for Defendant State of Idaho

Ian N. Service
Bannock County Prosecutor's Office
624 E Center
P.O. Box P
Pocatello, ID 83201

☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

Attorneys for Defendant Bannock County


Sally Anderson
Assistant to Briane Nelson Mitchell

WILLIAM L. MAUK (ISB #1825)
BRIANE NELSON MITCHELL (ISB #2346)
MAUK & BURGOYNE
515 South 6th Street
Post Office Box 1743
Boise, Idaho 83701-1743
Telephone: (208) 345-2654
Facsimile (208) 345-3319
nels@maukburgoyne.com

FILED
BANNOCK COUNTY
CLERK OF THE COURT

2013 JUL 26 PM 3: 26

BY CA
DEPUTY CLERK

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

RYAN M. MITCHELL,

Plaintiff,

vs.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity, and
BANNOCK COUNTY, IDAHO, a political
subdivision, SUSAN SIMPSON, as
Conservator and Guardian of Gerald Durk
Simpson, and DOES 1-25,

Defendants.

Case No. CV 12-4124 OC

(PROPOSED) DEFAULT JUDGMENT


Defendants Gerald Durk Simpson and Susan Simpson as Conservator/Guardian of Gerald Durk Simpson were served with the First Amended Complaint and have failed to plead or otherwise defend within the time allowed.

THEREFORE, a default is entered against Defendants (Gerald Durk Simpson and Susan Simpson as Conservator/Guardian of Gerald Durk Simpson) on the Third and Fourth Causes of Action in the First Amended Complaint.

(PROPOSED) DEFAULT JUDGMENT - 1

IT IS FURTHER ORDERED that Plaintiff shall be allowed to submit evidence from which the Court can determine the amount of damages, as well as the fees and costs, that shall be awarded as part of this Default Judgment pursuant to IRCP 55(b)(2) and I.C. 5-336.

Dated this 26th day of July, 2013.



Stephen S. Dunn
District Judge

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26 day of July, 2013, I caused a true and correct copy of the above and foregoing instrument to be served upon the following individuals in the manner indicated below:

Susan Simpson
765 Channing Ave.
Palo Alto, CA 94301

☒ U.S. Mail
☐ Facsimile
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☐ Hand Delivery

*As Conservator and Guardian of
Gerald Durk Simpson*

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BANNOCK COUNTY
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2013 JUL 29 AM 9:57
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Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

RYAN M. MITCHELL,

Plaintiff,

vs.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity, and
BANNOCK COUNTY, IDAHO, a political
subdivision, SUSAN SIMPSON, as
Conservator and Guardian of Gerald Durk
Simpson, and DOES 1-25,

Defendants.

Case No. CV 12-4124 OC

**MEMORANDUM IN OPPOSITION
TO STATE'S MOTION FOR
SUMMARY JUDGMENT**

Date: August 12, 2013

Time: 4:00 p.m.

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I. Introduction

There is no merit to the State's summary judgment motion. The State has made two arguments; neither of which is supported by the law or the facts.

The State has argued that the first two claims in Mr. Mitchell's complaint which seek **declaratory relief** (claim 1) and **injunctive relief** (claim 2) should be barred because the Constitutional provision and the Idaho statute establishing the rights of crime victims, prevent claims for **money damages**. The State should not be allowed to deliberately distort Mr. Mitchell's Complaint or the language of the Idaho Constitution and Victim Rights Statute. Mr. Mitchell's Complaint does set forth meritorious claims for declaratory and injunctive relief based upon the violation of his rights as a crime victim (as Defendant Bannock County recognized when it entered into a Consent Stipulation and Judgment on those same claims for relief).

The second argument made by the State is that its involvement in the shooting of Mr. Mitchell should protect it from liability for the fifth claim (negligence/gross negligence/reckless/willful) based upon statutory immunity. The State, however, has failed to come forward with evidence, let alone undisputed evidence, that would bring its actions within the statutory immunity provisions.

Furthermore, there are two other reasons for denying the State's motion. First, the State's two conclusory hearsay affidavits do **not** contain admissible evidence that could conceivably support summary judgment under Rule 56(e). And, second, the State's motion is premature because further discovery should be allowed under Rule 56(f).

II. Factual Background

Unlike with the State of Idaho's motion, there is support, with admissible evidence, for Mr. Mitchell's description of the factual background.¹

1. Simpson has a longstanding mental disease or disorder. His primary diagnosis is Schizophrenia.²

2. For most of his adult life, Simpson has been supervised, treated, and/or assisted by the State of Idaho (Health and Welfare Department, and State Hospital South).³

3. Simpson has been unable to manage his medications without assistance for most of his adult life.⁴

4. The State stopped providing services and treatment to Simpson "on or about August 9, 2010." Prior to that time State employees "delivered medications to Simpson's home, observed him take medications, taught him shopping and took him shopping...."⁵

¹ All of the evidence relied upon by Mr. Mitchell is admissible because it consists of admissions made by the State in response to discovery requests in this matter, or in other Court proceedings in which the State participated or was a party. See generally IRE 801(d)(2) (admissions of a party opponent) and IRE 201 (judicial notice of court records and documents).

² Idaho State Attorney General's "Petition for Appointment of Guardian/Conservator," *In re Simpson*, Idaho State District Court for Bingham County, No. CV-2012-0862, p. 2 (copy attached to Sally Anderson Affidavit ("Anderson Affidavit") as Exhibit 1); Idaho State Medical Doctor Letter to Court, Idaho State Attorney General's "Petition for Appointment of Guardian/Conservator," *In re Simpson*, Idaho State District Court for Bingham County, No. CV-2012-0862, p. 2 (copy attached to Anderson Affidavit as Exhibit 2); Court Visitor's Report, Idaho State Attorney General's "Petition for Appointment of Guardian/Conservator," *In re Simpson*, Idaho State District Court for Bingham County, No. CV-2012-0862, p. 2 (copy attached to Anderson Affidavit as Exhibit 3).

³ State Critical Incident Report, prepared by Heath Sommer (Program Lead, State Health and Welfare Adult Mental Health), Sept. 28, 2010 [day after Simpson shot Mitchell], State Document Production No. 00130 (copy attached to the Anderson Affidavit as Exhibit 4); Court Visitor's Report, Idaho State Attorney General's "Petition for Appointment of Guardian/Conservator," *In re Simpson*, Idaho State District Court for Bingham County, No. CV-2012-0862, p. 2 (copy attached to Anderson Affidavit as Exhibit 3); Idaho State Medical Doctor Letter to Court, Idaho State Attorney General's "Petition for Appointment of Guardian/Conservator," *In re Simpson*, Idaho State District Court for Bingham County, No. CV-2012-0862, p. 2 (copy attached to Anderson Affidavit as Exhibit 2).

⁴ Court Visitor's Report, Idaho State Attorney General's "Petition for Appointment of Guardian/Conservator," *In re Simpson*, Idaho State District Court for Bingham County, No. CV-2012-0862, p. 2 (copy attached to Anderson Affidavit as Exhibit 3).

⁵ State of Idaho Answers to Interrogatory Nos. 2 and 4 (copy attached to the Anderson Affidavit as Exhibit 5).

5. The State stopped providing support and services to Simpson because his “program was designed for short term crisis intervention rather than long term treatment.”⁶

6. Less than two months after the State terminated its support and services to Simpson, on September 27, 2010, “Simpson shot the Plaintiff, Ryan Mitchell, in the back.”⁷

7. The State has admitted that it was acting in a wanton, willful and reckless manner in the Summer of 2010. In a report that was prepared by a State official as part of his duties at the Pocatello State Health and Welfare office, the State admitted that:

1. We do not have enough clinical or technical support staff to meet the current demand we are experiencing
2. Because of our client-to-staff ratio we are providing less than the standard of treatment to nearly all individuals in our Programs
3. We are not complying with mandatory paperwork and billing guidelines
4. We are not complying with mandatory legal guidelines
5. We are not in compliance with our own Departmental guidelines.⁸

8. Prior to terminating the State’s support and services for Simpson, two State employees “saw Simpson walking in town [i.e. Pocatello] with what appeared to be a gun.” The State employees took pictures of Simpson with his gun and “posted” them for other State employees to see.⁹

⁶ State of Idaho Answer to Interrogatory No. 2 (copy attached to the Anderson Affidavit as Exhibit 5).

⁷ State of Idaho Statement of Undisputed Facts No. 2.

⁸ The State’s Document Production contained a copy of this report (Nos. 00124-00125) (copy is attached to the Anderson Affidavit as Exhibit 9); the State also attached a copy of this report to the Chadwick Affidavit as Exhibit C.

⁹ State of Idaho Answer to Interrogatory No. 7 (copy attached to the Anderson Affidavit as Exhibit 5); Photographs of Simpson with a gun, State Document Production Nos. 00173, 00174 (copies are attached to the Anderson Affidavit as Exhibit 6); State Critical Incident Report, prepared by Heath Sommer (Program Lead, State Health and Welfare Adult Mental Health), Sept. 28, 2010 [day after Simpson shot Mitchell], State Document Production No. 00130 (copy attached to the Anderson Affidavit as Exhibit 4).

9. After Simpson shot Ryan Mitchell, the State refused to help the Pocatello Police with their investigation.¹⁰

10. Over the course of a four day period (September 28, 2010 through October 1, 2010) immediately after Simpson shot Ryan Mitchell, State employees reviewed and/or made changes to Simpson's file or records 59 different times.¹¹

11. On September 30, 2010 the Bannock County Prosecuting Attorney's Office filed a charge of Aggravated Battery against Simpson (I.C. §§ 18-903(a), 18-907(1)(a) & (b)) with notice that the State would seek an enhancement penalty for the use of a deadly weapon in the commission of a crime (I.C. § 18-2520):

That the said GERALD DURK SIMPSON, in the County of Bannock, State of Idaho, on or about the 27th day of September, 2010, did willfully and unlawfully use force or violence upon the person of another, Ryan Mitchell, by either the use of a deadly weapon or instrument and/or causing great bodily harm or permanent disability or permanent disfigurement by shooting Ryan Mitchell in the back.¹²

12. Even though the Aggravated Battery charge was still pending against Simpson, the State initiated a plan for the purpose of obtaining the release of Simpson. On May 3, 2012, the State, through the State Attorney General's Office, filed a Petition for Simpson in the District Court for Bingham County: *In re Simpson*, Idaho State District Court for Bingham County, No.

¹⁰ Excerpts from the Pocatello Police Report were part of the State Document Production (Nos. 131, 165) (attached to the Anderson Affidavit as Exhibit 7).

¹¹ State of Idaho's First Supplemental Answer to Interrogatory No. 11, July 15, 2013, with Access Logs (attached to the Anderson Affidavit as Exhibit 18).

¹² Criminal Complaint, *State v. Gerald Durk Simpson*, Idaho State District Court for Bannock County, Case No. CR-2010-15926FE (a copy of which is attached to the Anderson Affidavit as Exhibit 8).

CV-2012-0862. The purpose of the Petition that the State filed for Simpson was to have a Conservator/Guardian appointed for Simpson so that he could be released from State custody.¹³

13. The State never notified Mr. Mitchell that it had initiated the action in the District Court for Bingham County on behalf of Simpson. The State never notified Mr. Mitchell that it was representing Simpson in the District Court for Bingham County. The State never notified Mr. Mitchell that the proceeding in the District Court for Bingham County that could result in the release of Simpson from State custody. The State never notified Mr. Mitchell that the State initiated a proceeding in the District Court for Bingham County could result in the dismissal of the criminal charges against Simpson.¹⁴

14. In response to the Interrogatory that asked the State to “[i]dentify each court proceeding that the State of Idaho has filed to obtain the appointment of conservator and/or guardianship for anyone who is facing criminal charges, the State said that “since 2005 the State has filed 32 conservatorship/guardianship proceedings for patients at State Hospital South or clients of Adult Mental Health in Region Six.”¹⁵

III. Legal Discussion

With its motion, the State has the burden of proving that “there is no genuine issue as to any material fact” and that it “is entitled to judgment as a matter of law.” IRCP 56(c). In considering the State’s motion, this Court “is to liberally construe the record in favor of the party

¹³ Email from Idaho State Attorney General’s Office, dated April 10, 2012, produced by the State (Nos. 00008-00009) from its records (copy is attached to the Anderson Affidavit as Exhibit 10); emails discussing the release of Simpson and the dismissal of the criminal charge, dated July 13, 2010, produced by the State from its records (No. 00018) (copy attached to the Anderson Affidavit as Exhibit 11).

¹⁴ State of Idaho Answer to Interrogatory No. 9 (copy attached to the Anderson Affidavit as Exhibit 5); State of Idaho Response to Document Request No. 8 (copy attached to the Anderson Affidavit as Exhibit 12); State of Idaho Response to Request for Admission No. 25 (copy attached to the Anderson Affidavit as Exhibit 13).

¹⁵ State of Idaho Answer to Interrogatory No. 17 (copy attached to Anderson Affidavit as Exhibit 5).

opposing the motion and draw all reasonable inferences and conclusions in that party's favor." *State v. Shama Resources Ltd Partnership*, 127 Idaho 267, 270 (1995). A summary judgment "motion should be granted only if the evidence reveals no disputed issues of material fact." *Sammis v. Magnetek, Inc.*, 130 Idaho 342, 349 (1997).

A. Objection to, and Motion to Strike, the State's Affidavits

The State has submitted two affidavits in support of its motion. Neither affidavit contains admissible evidence. Rule 56(e) states that "[s]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." IRCP 56(e). As the Idaho Supreme Court has explained:

The requirements of Rule 56(e) are not satisfied by an affidavit that is conclusory, based on hearsay, and not supported by personal knowledge. Only material contained in affidavits or depositions that is based upon personal knowledge or that is admissible at trial will be considered by this Court.

Smith v. Board of Corrections, 133 Idaho 519, 523 (1999).

The Jodi Osborn affidavit is conclusory, and is not even based upon the affiant's personal knowledge. In addition, even if the one fact in the affidavit is considered (i.e. the statement about the State budget), there is no connection between that fact and Simpson other than speculation and surmise which does not help the State because no inferences can be drawn in the State's favor in connection with this motion. *See State v. Shama Resources Ltd. Partnership*, 127 Idaho 267, 270 (1995) ("all reasonable inferences and conclusions" must be drawn in favor of party opposing summary judgment).

The Sue Chadwick affidavit is not much better than the Osborn affidavit. The State has used the Chadwick affidavit in an attempt to introduce three hearsay documents into evidence. However, Chadwick can only say that the documents were "maintained in the normal course of business of the Idaho Department of Health & Welfare." Notably absent from the Chadwick affidavit are statements that would enable any of the three documents to be considered under the public records and reports exception to the hearsay rule: 1) records setting forth regularly conducted and recorded activities, 2) matters observed pursuant to a legal duty to observe and report, or 3) factual findings resulting from an investigation authorized by law.¹⁶

The three Chadwick exhibits are also inadmissible because of lack of personal knowledge under IRE 602. Chadwick Exhibit A is a self-serving memo prepared by a State employee after Simpson shot Mr. Mitchell and appears to be little more than an attempt to justify the State's knowledge that Simpson was dangerous (because of the guns and his mental illness) and the State's decision to terminate all service to, and supervision of, Simpson. (This is a classic example of the "circumstances, indicat[ing] lack of trustworthiness" which would support exclusion even if the State could satisfy the other requirements of the public records and reports exception to the hearsay rule.) Chadwick Exhibit B purports to be a letter to Simpson, although the State offers no testimony concerning its preparation or whether it was sent or received.

¹⁶ IRE 803(8) sets forth the exception to the hearsay rule:

(8) Public records and reports. Unless the sources of information or other circumstances indicate lack of trustworthiness, records, reports, statements, or data compilations in any form of a public office or agency setting forth its regularly conducted and regularly recorded activities, or matters observed pursuant to duty imposed by law and as to which there was a duty imposed by law and as to which there was a duty to report, or factual findings resulting from an investigation made pursuant to authority granted by law.

Chadwick Exhibit C purports to be an email from Chadwick even though it appears to have been written by another state employee - - Heath Sommer.

At the same time that the State cannot, by means of the Chadwick affidavit, introduce the three documents prepared by State employees, it should be noted that Mr. Mitchell can utilize statements in those same documents **against** the State as admissions of a party opponent under Rule 801(d)(2). *See* IRE 801(d)(2) ("The statement is offered against a party and is...(1) a statement by a party's agent or servant concerning a matter within the scope of the agency or employment of the servant or agent..."). Consequently, the statements in Chadwick Exhibit C where the State's agent has admitted to the State's recklessness (or worse) are admissible against the State:

1. We do not have enough clinical or technical support staff to meet the current demand we are experiencing
2. Because of our client-to-staff ratio we are providing less than the standard of treatment to nearly all individuals in our Programs
3. We are not complying with mandatory paperwork and billing guidelines
4. We are not complying with mandatory legal guidelines
5. We are not in compliance with our own Departmental guidelines

(Chadwick Aff., Ex. C.) Likewise, Chadwick Exhibit C can be used to **contradict** the State's purported statement of undisputed fact that its "decision to stop providing services to Mr. Simpson was based, in large measure, on decreases in funding and resources available to the Department of Health and Welfare." (State's Statement of Undisputed Fact, No. 5.) However, Chadwick Exhibit C states that when the State decided to cut support and services to patients, this was "not a decision that was caused by budget cuts alone." In addition, Chadwick Exhibit B, which is a copy of the State's purported letter to Simpson telling him that he is being cut, says

MEMORANDUM IN OPPOSITION TO STATE'S MOTION FOR SUMMARY JUDGMENT - 8

nothing about decreases in funding and instead tells Simpson that his program is only for short term care, rather than long term treatment.¹⁷

B. The State Violated Mr. Mitchell's Constitutional and Statutory Rights

The State has argued that it is entitled to summary judgment because Mr. Mitchell "fails to recognize that no cause of action exists with respect to his victims' rights." (State Memo, p. 7.) The State has failed to read Article I, Section 22 of the Idaho Constitution, or Idaho Code Section 19-5306. Neither provision says that "no cause of action exists with respect to victim's rights" as the State has argued. The State has also failed to read the first two causes of action in Mr. Mitchell's Complaint. (Amended Complaint, ¶¶ 38-44.)

The language in the Constitutional provision and the Victim Rights Statute merely states that neither provision should be "construed as creating a cause of action for money damages." Mr. Mitchell has not, of course, filed a cause of action for money damages under Idaho Constitution, Article I, Section 22, or Idaho Code Section 19-5306. The Legislature made the decision to eliminate claims for money damages, but did **not** eliminate claims for other remedies like declaratory or injunctive relief as Mr. Mitchell is pursuing with his first two claims in his Complaint.

¹⁷ The statement in Chadwick Exhibit B is consistent with the State's interrogatory answer. Compare State of Idaho Answer to Interrogatory No. 2 (Anderson Affidavit at Exhibit 5): Simpson's "program was designed for short term crisis intervention rather than long term treatment" with Chadwick Exhibit B:

The focus of the Adult Mental Health program is to engage in relatively brief crisis intervention and stabilization, rather than long-term treatment. We recognize that, due to your symptoms, ongoing treatment would probably be of benefit. Unfortunately, as of now, it appears that you do not meet criteria for our intensive level of services. As this is the case, we wanted to inform you that we will be closing your file.

(Chadwick Aff., Ex. B.)

Neither the first nor the second causes of action seek money damages from the State. The first cause of action seeks a Declaratory Judgment. The second cause of action seeks an injunction, an equitable remedy. There is **nothing** in the Constitutional language of Article I, Section 20 (the "Constitutional Rights of Crime Victims"), or the statutory language of Idaho Code Section 19-5306 (the "Victim Rights Statute"), that would abolish a cause of action for declaratory or injunctive relief.

The first cause of action sets forth a claim for Declaratory Judgment against the State for violation of Mr. Mitchell's rights as a crime victim under Idaho Constitution, Article I, Section 20 and Idaho Code Section 19-5306. (Amended Complaint, ¶¶ 38-41.) Under Idaho Code Section 10-1201, Idaho Courts have broad powers "to declare rights, status and other legal relations, whether or not further relief is or could be claimed." That is, this Court can declare Mr. Mitchell's "rights" under the Constitutional Crime Victim provision, and under the Crime Victim Statute, regardless of "whether or not further relief," like money damages, is available.¹⁸

The second cause of action sets forth a claim for injunctive relief against the State based upon its violation of Mr. Mitchell's rights as a crime victim under Idaho Constitution, Article I, Section 20, and Idaho Code Section 19-5306. (Amended Complaint, ¶¶ 42-44.) The Constitutional provision and statute eliminate the legal remedy of "money damages," which makes equitable relief in the form of an injunction against future violations even more appropriate. *See Thomas v. Campbell*, 107 Idaho 398, 404 (1984) ("there is the established

¹⁸ See also I.C. § 10-1202 ("Any person interested under a deed, will, written contract or other writings constituting a contract or any oral contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.")

principle of law that equity will not afford relief to a plaintiff where there is an adequate remedy at law” [i.e., money damages]). Furthermore, the “[e]quity jurisdiction of the District Court is not confined to statutory provision for delineation and is not subject to diminution by legislative acts.” *Gerlach v. Schultz*, 72 Idaho 507, 512 (1952).

In the present case, Bannock County has already recognized that it violated the Idaho Constitution and the Victim Rights Statute, and, as a result, entered into a Stipulated Consent Judgment providing for both declaratory and injunctive relief. It is unfortunate that the State has refused to recognize its own violations and instead filed the current motion that has ignored the plain language of the Idaho Constitution, the Victim Rights Statute and Mr. Mitchell’s Complaint.

C. The State Cannot Hide Behind the Immunity Provisions of the Tort Claims Act

The State argues that two different types of immunity should protect it from liability from Mr. Mitchell’s fifth claim for relief. The State is wrong. As an initial matter, it must be noted that the “purpose of the ITCA [Idaho Tort Claims Act] is to provide ‘much needed relief to those suffering injury from the negligence of government employees.’” *Rees v. State Dept. of Health and Welfare*, 143 Idaho 10, 19 (2006).

The State does not have evidence to prove that its decision to terminate its assistance and supervision of Simpson should be protected by “discretionary function immunity.” The State argues that its “decision was made in response to decreased funding and resources....” (State Memo, p. 5.) However, the State does not submit testimony from anyone with personal knowledge as required by Idaho Rule of Evidence 602. Instead, it has submitted a conclusory affidavit about general budget reductions (Osborn) and a conclusory affidavit from a custodian

(Chadwick) that attempts to authenticate a handful of isolated State documents, including a self-serving memo that was prepared, after Simpson shot Mr. Mitchell, as part of the State's attempt to cover up and justify its complicity in the shooting.

The State's attempt to hide behind budget cuts is also inconsistent with its sworn answers to interrogatories. In its answers, the State did not say that Simpson was terminated because of discretionary budget cuts. Instead, the State said that:

Mr. Simpson was informed that the Adult Metal [sic] Health program was designed for short term crisis intervention rather than long term treatment and that he did not meet the criteria for intensive level of services. He was informed that if he were to reach a crisis level in the future he was encouraged to submit for re-assessment.

(State Int. Answer No. 2 (copy attached to the Anderson Affidavit as Exhibit 5).)¹⁹ Furthermore, an exhibit to the State's motion makes the statement that the decision to cut off support and services to patients was "not a decision that was caused by budget cuts alone." (Chadwick Affidavit, Exhibit C.)

The present case is similar to those cases where the discretionary function exception has not shielded the State from liability. See *Blackhawk v. City of Chubbuck*, 488 F.Supp.2d 1097 (D.Id.2006) (discretionary function exception did not apply to whether City had negligently supervised police officer); *Hunter v. State*, 138 Idaho 44, 48 (2002) (discretionary function exception did not protect State from its negligence in failing to inform employer of probationer's

¹⁹ In addition, as noted earlier, the State submitted a document with the Chadwick Affidavit (Exhibit B) that purports to be a letter from the State to Simpson stating that the State's services to him were being terminated because the focus of his "program is to engage in relatively brief crisis intervention and stabilization, rather than long-term treatment."

prior criminal record); *Rees v. State*, 143 Idaho 10 (2006) (discretionary function immunity did not shield State from liability for its failure to competently investigate child abuse).

The State also argues that it is entitled to immunity because it does not believe “that employees of the State acted recklessly or with willful or wanton conduct.” (State Memo, p. 6.) The State not only offers no evidence to support its assertion, but the State also ignores the evidence that has been developed thus far. The State ignores the admissions made by one of its supervisors in the Summer of 2010:

...we are providing less than the standard of treatment to nearly all individuals in our Programs.

...are not complying with mandatory legal guidelines.

...are not in compliance with our own Departmental guidelines.

(Anderson Affidavit, Exhibit 9; Chadwick Affidavit, Exhibit C.)

Some of the other evidence that the State has chosen to ignore includes:

- Simpson has a longstanding mental disease and disorder with a primary diagnosis of Paranoid Schizophrenic Psychotic Disorder.
- The State has been responsible for Simpson for almost all of his adult life (both at State Hospital South and out-patient programs like ACT).
- Simpson has been unable to manage his medications throughout his adult life.
- The State knew that Simpson had guns.
- A State employee had taken a photo of Simpson walking in Pocatello with a gun.
- The State had the photo of Simpson with his gun posted in the State’s offices so that State employees could see Simpson with the gun.
- The State stopped providing support and services to Simpson in August 2010 because his program was “for short term intervention rather than long term treatment.”

- Simpson shot and almost killed Mr. Mitchell on September 27, 2010.
- Immediately after the shooting, State officials began creating CYA memos for the State's file, attempting to justify Simpson's use and ownership of guns, as well as the State's termination of support and services to Simpson.
- Over the course of a four day period (September 28, 2010 through October 1, 2010) immediately after Simpson shot Mr. Mitchell, State employees reviewed and/or made changes to Simpson's file or records 59 times.
- While criminal charges were still pending against Simpson, the State (through Lawrence Wasden, its Attorney General and chief law enforcement officer), filed an action on behalf of Simpson in Bingham County District Court.
- The State initiated the Bingham County District Court proceeding as part of its effort to have Simpson released from the State Hospital.
- The State never informed or provided notice to Mr. Mitchell that the State was representing Simpson in the Bingham County District Court proceeding or that the State was working to have Simpson released from custody.
- In response to the question that asked the State to identify the cases where the State filed conservator/guardian actions on behalf of individuals facing criminal charges, the State has admitted to doing so on 32 occasions since 2005.

A jury could infer from these facts that the State had acted knowingly and created an unreasonable risk of harm involving a high degree of probability that harm could occur. Idaho Code § 6-904A.

Unlike *Harris v. State*, 123 Idaho 295 (1993) cited by the State, in the present case the State had terminated its services and support to Simpson with knowledge of the consequences. This case is like *Smith v. Board of Corrections*, 133 Idaho 519 (1999), where the State lost a similar attempt to use immunity. In *Smith*, the Court rejected the State's summary judgment motion because it found that a reasonable inference could be drawn that a supervisor knew that the safety shield had been removed from a table saw and that created a hazard from which "a

jury could find that the State's conduct was willful, wanton and reckless." *Id.*, 133 Idaho at 524. In the present case, there is sufficient evidence that the State's termination of Simpson created a risk from which a jury could find that the State's conduct was "reckless, willful and wanton."

D. An Alternative Basis for Denying the State's Motion is Provided by Rule 56(f)

Rule 56(f) of the Idaho Rules of Civil Procedure provides an alternative ground for denying the State's Motion for Summary Judgment. This Rule states that:

Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

IRCP 56(f). The State's Motion for Summary Judgment is premature and can be denied on that basis.

First of all, the State filed this motion before it was finished responding to the initial set of discovery requests. The State filed this motion on June 26, 2013, but then waited another nineteen days, until July 15, 2013, before getting around to serving its Supplemental Answers and Supplemental Responses to the First Set of Interrogatories and the First Set of Document Requests.²⁰

Second, the State has refused to produce the vast majority of information relevant to this lawsuit and the claims made by Mr. Mitchell. The State has produced a couple hundred pages of documents, at the same time that it has refused to produce thousands of pages of relevant

²⁰ A copy of the State's July 15, 2013 Proof of Service is attached to the Anderson Affidavit as Exhibit 17.

documents. Indeed, according to its most recent Privilege Log, the State has refused to produce well over 5,700 pages of material.²¹

Third, Plaintiff and his counsel are in the process of seeking to compel discovery from the State.²² This involves working through several issues including:

- Either agreeing upon, or obtaining from the Court, a reasonable protective order so that the State cannot hide behind its boilerplate objection.²³
- The State's unwillingness to provide complete answers to the interrogatories.
- The State's refusal to provide an adequate description of the documents that it has refused to produce.
- The State's withholding of documents that it had previously made available to the public.

Fourth, Plaintiff and his counsel have not yet taken the depositions of the State's Rule 30(b)(6) representative(s).²⁴ In addition, Plaintiff and his counsel are in the process of serving a subpoena on a former State employee, Dr. Sommer, who appears to have been the State's key

²¹ A copy of the State's July 15, 2013 Privilege and Statutory Exemption Log is attached to the Anderson Affidavit as Exhibit 19. It identifies 6,102 pages and documents responsive to the discovery requests but has only produced a few hundred pages of material. The State has utilized the same boilerplate objection as its basis for refusing to produce the relevant documents and material:

These documents have been withheld to protect healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-340C(13).

(Anderson Affidavit, Exhibit 19.)

²² A copy of a detailed Meet and Confer letter, dated July 23, 2013, from Plaintiff's counsel to the State's attorneys, is attached to the Anderson Affidavit as Exhibit 14.

²³ In connection with the State's refusal to produce the vast majority of documents because of purported privacy or confidentiality concerns, Plaintiff's counsel has prepared a simple solution to the roadblock:

I would propose that we enter into an agreement by which we agree to respect any claim of confidentiality or privacy asserted by the State, and agree that we will not use any material so designated until we first seek permission from the Court. That would place the burden on us, but, at the same time, give the victim (i.e. Mr. Mitchell and his counsel) the opportunity to review the information that is contained in the State's records. Please let me know if this is agreeable to the State so that we can move discovery forward.

(Anderson Affidavit, Exhibit 14.)

²⁴ A copy of the Rule 30(b)(6) Deposition Notice that has been served on the State is attached to the Anderson Affidavit as Exhibit 15.

player in the reckless and wanton conduct by the State.²⁵ It would be improper to grant the State's motion before there was an opportunity for those depositions to go forward.


IV. Conclusion

The State's motion should be denied. If any judgment is entered, it should be entered in favor of Mr. Mitchell. *See Just's Inc. v. Arrington Const. Co.*, 99 Idaho 462, 476 (1978) ("Although the plaintiff did not move for summary judgment, the district court was nonetheless empowered to grant it"). Mr. Mitchell should be awarded costs and attorney's fees in opposing this motion.

DATED this 26th day of July, 2013.

MAUK & BURGOYNE

By:



Briane Nelson Mitchell, Of the Firm
Attorneys for Plaintiff

²⁵ A copy of the Deposition Notice and Subpoena to Dr. Heath Sommer is attached to the Anderson Affidavit as Exhibit 16.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of July, 2013, I caused a true and correct copy of the above and foregoing instrument to be served upon the following individuals in the manner indicated below:

Susan Simpson
765 Channing Ave.
Palo Alto, CA 94301

☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

*As Conservator and Guardian of
Gerald Durk Simpson*

Thomas B. High
Bren E. Mollerup
Benoit, Alexander, Harwood & High, LLP
126 Second Avenue North
P.O. Box 366
Twin Falls, ID 83303-0366

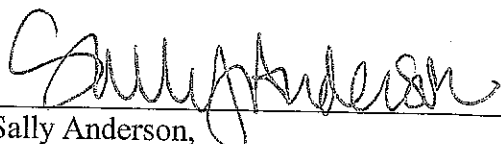
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Attorneys for Defendant State of Idaho

Ian N. Service
Bannock County Prosecutor's Office
624 E Center
P.O. Box P
Pocatello, ID 83201

☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

Attorneys for Defendant Bannock County


Sally Anderson,
Assistant to Briane Nelson Mitchell

ORIGINAL

WILLIAM L. MAUK (ISB #1825)
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FILED
BANNOCK COUNTY
CLERK OF THE COURT
2013 JUL 29 AM 9:58
BY DEPUTY CLERK

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

RYAN M. MITCHELL,

Plaintiff,

vs.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity, and
BANNOCK COUNTY, IDAHO, a political
subdivision, SUSAN SIMPSON, as
Conservator and Guardian of Gerald Durk
Simpson, and DOES 1-25,

Defendants.

Case No. CV 12-4124 OC

**PLAINTIFF'S STATEMENT OF
UNDISPUTED FACTS AND
RESPONSE TO STATE'S
STATEMENT OF UNDISPUTED
FACTS IN CONNECTION WITH
THE STATE'S MOTION FOR
SUMMARY JUDGMENT**

Date: August 12, 2013

Time: 4:00 p.m.

Undisputed Facts

1. Simpson has a longstanding mental disease or disorder. His primary diagnosis is Schizophrenia.

Evidence:

- Simpson "suffers from Schizophrenia, Paranoid Type." Idaho State Attorney General's "Petition for Appointment of Guardian/Conservator," *In re Simpson*,

**PLAINTIFF'S STATEMENT OF UNDISPUTED FACTS AND RESPONSE TO STATE'S STATEMENT
OF UNDISPUTED FACTS IN CONNECTION WITH THE STATE'S MOTION FOR SUMMARY
JUDGMENT - 1**

Idaho State District Court for Bingham County, No. CV-2012-0862, p. 2 (copy attached to Sally Anderson Affidavit ("Anderson Affidavit") as Exhibit 1).

- Simpson's "primary diagnosis is Schizophrenia." Idaho State Medical Doctor Letter to Court, Idaho State Attorney General's "Petition for Appointment of Guardian/Conservator," *In re Simpson*, Idaho State District Court for Bingham County, No. CV-2012-0862, p. 2 (copy attached to Anderson Affidavit as Exhibit 2).
- Simpson's "primary diagnosis is Paranoid Schizophrenia Psychotic Disorder." Court Visitor's Report, Idaho State Attorney General's "Petition for Appointment of Guardian/Conservator," *In re Simpson*, Idaho State District Court for Bingham County, No. CV-2012-0862, p. 2 (copy attached to Anderson Affidavit as Exhibit 3).

2. For most of his adult life, Simpson has been supervised, treated, and/or assisted by the State of Idaho (Health and Welfare Department, and State Hospital South).

Evidence:

- Simpson "had been a client with the [State Health and Welfare] ACT team and had been seen numerous times weekly over the course of many years." State Critical Incident Report, prepared by Heath Sommer (Program Lead, State Health and Welfare Adult Mental Health), Sept. 28, 2010 [day after Simpson shot Mitchell], State Document Production No. 00130 (copy attached to the Anderson Affidavit as Exhibit 4.)
- Simpson "has lived in and out of halfway houses and has been hospitalized at State Hospital South in the past for most of his adult life." Court Visitor's Report, Idaho State Attorney General's "Petition for Appointment of Guardian/Conservator," *In re Simpson*, Idaho State District Court for Bingham County, No. CV-2012-0862, p. 2 (copy attached to Anderson Affidavit as Exhibit 3).
- Simpson "has had 4 or 5 admissions here at SHS." Idaho State Medical Doctor Letter to Court, Idaho State Attorney General's "Petition for Appointment of Guardian/Conservator," *In re Simpson*, Idaho State District Court for Bingham County, No. CV-2012-0862, p. 2 (copy attached to Anderson Affidavit as Exhibit 2).

3. Simpson has been unable to manage his medications without assistance for most of his adult life.

Evidence:

- Simpson "has been unable to manage his medications without the assistance of case managers and/or his family throughout his adult life." Court Visitor's Report, Idaho State Attorney General's "Petition for Appointment of Guardian/Conservator," *In re Simpson*, Idaho State District Court for Bingham County, No. CV-2012-0862, p. 2 (copy attached to Anderson Affidavit as Exhibit 3).

4. The State stopped providing services and treatment to Simpson "on or about August 9, 2010." Prior to that time State employees "delivered medications to Simpson's home, observed him take medications, taught him shopping and took him shopping...."

Evidence:

- State of Idaho Answers to Interrogatory Nos. 2 and 4 (copy attached to the Anderson Affidavit as Exhibit 5.)

5. The State stopped providing support and services to Simpson because his "program was designed for short term crisis intervention rather than long term treatment."

Evidence:

- State of Idaho Answer to Interrogatory No. 2 (copy attached to the Anderson Affidavit as Exhibit 5).

6. Less than two months after the State terminated its support and services to Simpson, on September 27, 2010, "Simpson shot the Plaintiff, Ryan Mitchell, in the back."

Evidence:

- State of Idaho Statement of Undisputed Facts No. 2.

7. The State has admitted that it was acting in a wanton, willful and reckless manner in the Summer of 2010. In a report that was prepared by a State official as part of his duties at the Pocatello State Health and Welfare office, the State admitted that:

1. We do not have enough clinical or technical support staff to meet the current demand we are experiencing
2. Because of our client-to-staff ratio we are providing less than the standard of treatment to nearly all individuals in our Programs
3. We are not complying with mandatory paperwork and billing guidelines
4. We are not complying with mandatory legal guidelines
5. We are not in compliance with our own Departmental guidelines

Evidence:

- The State's Document Production contained a copy of this report (Nos. 00124-00125) (copy is attached to the Anderson Affidavit as Exhibit 9).
- The State also attached a copy of this report to the Chadwick Affidavit as Exhibit C.

8. Prior to terminating the State's support and services for Simpson, two State employees "saw Simpson walking in town [i.e. Pocatello] with what appeared to be a gun." The State employees took pictures of Simpson with his gun and "posted" them for other State employees to see.

Evidence:

- State of Idaho Answer to Interrogatory No. 7 (copy attached to the Anderson Affidavit as Exhibit 5).
- Photographs of Simpson with a gun, State Document Production Nos. 00173, 00174 (copies are attached to the Anderson Affidavit as Exhibit 6.)
- Simpson "was seen in May 2009, carrying a firearm in public." State Critical Incident Report, prepared by Heath Sommer (Program Lead, State Health and

PLAINTIFF'S STATEMENT OF UNDISPUTED FACTS AND RESPONSE TO STATE'S STATEMENT OF UNDISPUTED FACTS IN CONNECTION WITH THE STATE'S MOTION FOR SUMMARY JUDGMENT - 4

Welfare Adult Mental Health), Sept. 28, 2010 [day after Simpson shot Mitchell], State Document Production No. 00130 (copy attached to the Anderson Affidavit as Exhibit 4.)

9. After Simpson shot Ryan Mitchell, the State refused to help the Pocatello Police with their investigation.

Evidence:

- Excerpts from the Pocatello Police Report were part of the State Document Production (Nos. 131, 165) (attached to the Anderson Affidavit as Exhibit 7):

I received a call [on September 28, 2010] from Dr. HEATH SOMMER [State Health and Welfare], who identified himself as the program manager for Adult Mental Health in Pocatello. Dr. SOMMER said that he is a clinical psychologist. Dr. SOMMER called me on a conference call with MYRON BURGLUND, who identified himself as a licensed social worker. Dr. SOMMER and BURGLUND said that without an Order from a Judge, they could not discuss SIMPSON'S medical conditions.

10. Over the course of a four day period (September 28, 2010 through October 1, 2010) immediately after Simpson shot Ryan Mitchell, State employees reviewed and/or made changes to Simpson's file or records 59 different times.

Evidence:

- State of Idaho's First Supplemental Answer to Interrogatory No. 11, July 15, 2013 (copy with access logs attached to the Anderson Affidavit as Exhibit 18.)

11. On September 30, 2010 the Bannock County Prosecuting Attorney's Office filed a charge of Aggravated Battery against Simpson (I.C. §§ 18-903(a), 18-907(1)(a) & (b)) with notice that the State would seek an enhancement penalty for the use of a deadly weapon in the commission of a crime (I.C. § 18-2520):

PLAINTIFF'S STATEMENT OF UNDISPUTED FACTS AND RESPONSE TO STATE'S STATEMENT OF UNDISPUTED FACTS IN CONNECTION WITH THE STATE'S MOTION FOR SUMMARY JUDGMENT - 5

That the said GERALD DURK SIMPSON, in the County of Bannock, State of Idaho, on or about the 27th day of September, 2010, did willfully and unlawfully use force or violence upon the person of another, Ryan Mitchell, by either the use of a deadly weapon or instrument and/or causing great bodily harm or permanent disability or permanent disfigurement by shooting Ryan Mitchell in the back.

Evidence:

- Criminal Complaint, *State v. Gerald Durk Simpson*, Idaho State District Court for Bannock County, Case No. CR-2010-15926FE (a copy of which is attached to the Anderson Affidavit as Exhibit 8).

12. Even though the Aggravated Battery charge was still pending against Simpson, the State initiated a plan for the purpose of obtaining the release of Simpson. On May 3, 2012, the State, through the State Attorney General's Office, filed a Petition for Simpson in the District Court for Bingham County: *In re Simpson*, Idaho State District Court for Bingham County, No. CV-2012-0862. The purpose of the Petition that the State filed for Simpson was to have a Conservator/Guardian appointed for Simpson so that he could be released from State custody.

Evidence:

- Email from Idaho State Attorney General's Office, dated April 10, 2012 stating that they "will be completing all necessary court documents" for Simpson's guardianship/conservatorship. This email was produced by the State (Nos. 00008-00009) from its records (copy is attached to the Anderson Affidavit as Exhibit 10).
- Emails discussing the release of Simpson and the dismissal of the criminal charge, dated July 13, 2010, were produced by the State from its records (No. 00018) (copy attached to the Anderson Affidavit as Exhibit 11).

13. The State never notified Mr. Mitchell that it had initiated the action in the District Court for Bingham County on behalf of Simpson. The State never notified Mr. Mitchell that it was representing Simpson in the District Court for Bingham County. The State never notified

PLAINTIFF'S STATEMENT OF UNDISPUTED FACTS AND RESPONSE TO STATE'S STATEMENT OF UNDISPUTED FACTS IN CONNECTION WITH THE STATE'S MOTION FOR SUMMARY JUDGMENT - 6

Mr. Mitchell that the proceeding in the District Court for Bingham County could result in the release of Simpson from State custody. The State never notified Mr. Mitchell that the State initiated a proceeding in the District Court for Bingham County that could result in the dismissal of the criminal charges against Simpson.

Evidence:

- The State was asked to describe “all efforts that [it] made to provide notice to Mr. Mitchell of the Bingham County Court proceeding that the State of Idaho had initiated for Simpson in 2012” and answered by stating that “the State did not provide any such notice.” State of Idaho Answer to Interrogatory No. 9 (copy attached to the Anderson Affidavit as Exhibit 5).
- The State was asked to produce “all documents relating to the victim rights that the State of Idaho provided to Mr. Mitchell in connection with the Bingham County Court action that the State initiated in 2012” and responded by stating that “the state is not aware of any such documents.” State of Idaho Response to Document Request No. 8 (copy attached to the Anderson Affidavit as Exhibit 12).
- The State has admitted that it “did not notify Mr. Mitchell of the Bingham County Court action that it had initiated.” State of Idaho Response to Request for Admission No. 25 (copy attached to the Anderson Affidavit as Exhibit 13).

14. In response to the Interrogatory that asked the State to “[i]dentify each court proceeding that the State of Idaho has filed to obtain the appointment of conservator and/or guardianship for anyone who is facing criminal charges, the State said that “since 2005 the State has filed 32 conservatorship/guardianship proceedings for patients at State Hospital South or clients of Adult Mental Health in Region Six.”

Evidence:

- State of Idaho Answer to Interrogatory No. 17 (copy attached to Anderson Affidavit as Exhibit 5).

Response to State's Statement of Undisputed Facts

1. Durk Simpson was released from the care of the Idaho Department of Health and Welfare on June 23, 2010.

Response: This fact is in dispute. The State has said that "Simpson continued to receive services until on or about August 9, 2010." State Answer to Interrogatory No. 1 (copy attached to Anderson Affidavit as Exhibit 5).

2. On September 27, 2010 Durk Simpson shot the Plaintiff, Ryan Mitchell, in the back.

Response: Not disputed.

3. At the time Mr. Simpson shot Mr. Mitchell he was no longer in the care of the State of Idaho.

Response: Disputed, because the State has refused to produce more than 5,700 pages of documents relating to the supervision and services it produced to Simpson, and the State has not explained what it means by "care."

4. Funding to provide services through the Idaho Department of Health and Welfare was cut by \$36,550,600.00 between fiscal year 2009 and fiscal year 2010. This cut in funding reduced the amount of mental health services that could be provided by the State.

Response: This fact is in dispute. The only evidence provided by the State is a conclusory, hearsay assertion by a person who was not able to demonstrate personal knowledge.

5. The decision to stop providing services to Mr. Simpson was based, in large measure, on decreases in funding and resources available to the Department of Health and Welfare.

Response: This fact is in dispute. The State's conclusory hearsay Affidavits do **not** actually make that statement. Moreover, this fact is contradicted by the State's own admissions:

- Simpson was told that his "program was designed for short term crisis intervention rather than long term treatment and that he did not meet the criteria." (State of Idaho Answer to Interrogatory No. 2 (copy attached to Anderson Affidavit as Exhibit 5).)
- State letter to Simpson telling him that the State will be closing his file because the "focus of the Adult Mental Health program is to engage in relatively brief crisis intervention and stabilization, rather than long term treatment." (Chadwick Affidavit, Exhibit B.)
- State Health and Welfare Department's decision to cut patients from its program was "not a decision that was caused by budget cuts alone." (Anderson Affidavit, Exhibit 9; Chadwick Affidavit, Exhibit C.)

DATED this 26th day of July, 2013.

MAUK & BURGOYNE

By: 
Briane Nelson Mitchell, Of the Firm
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of July, 2013, I caused a true and correct copy of the above and foregoing instrument to be served upon the following individuals in the manner indicated below:

Susan Simpson
765 Channing Ave.
Palo Alto, CA 94301

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*As Conservator and Guardian of
Gerald Durk Simpson*

Thomas B. High
Bren E. Mollerup
Benoit, Alexander, Harwood & High, LLP
126 Second Avenue North
P.O. Box 366
Twin Falls, ID 83303-0366

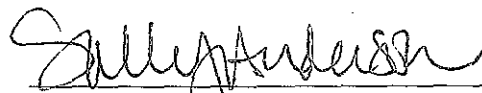
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Attorneys for Defendant State of Idaho

Ian N. Service
Bannock County Prosecutor's Office
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Pocatello, ID 83201

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Attorneys for Defendant Bannock County



Sally Anderson,
Assistant to Briane Nelson Mitchell

ORIGINAL

WILLIAM L. MAUK (ISB #1825)
BRIANE NELSON MITCHELL (ISB #2346)
MAUK & BURGOWNE
515 South 6th Street
Post Office Box 1743
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Telephone: (208) 345-2654
Facsimile (208) 345-3319
nels@maukburgoyne.com

FILED
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2013 JUL 29 AM 9:58
BY DEPUTY CLERK

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

RYAN M. MITCHELL,

Plaintiff,

vs.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity, and
BANNOCK COUNTY, IDAHO, a political
subdivision, SUSAN SIMPSON, as
Conservator and Guardian of Gerald Durk
Simpson, and DOES 1-25,

Defendants.

Case No. CV 12-4124 OC

**AFFIDAVIT OF SALLY ANDERSON
IN SUPPORT OF PLAINTIFF'S
OPPOSITION TO STATE'S MOTION
FOR SUMMARY JUDGMENT**

Date: August 12, 2013

Time: 4:00 p.m.

STATE OF IDAHO)

)ss.

County of Ada)

I, Sally Anderson, being first duly sworn upon oath, depose and say:

1. I am employed as a legal assistant at Mauk & Burgoyne, attorneys for the Plaintiff
in this action, and make the statements herein of my own personal knowledge and belief.

**AFFIDAVIT OF SALLY ANDERSON IN SUPPORT OF PLAINTIFF'S OPPOSITION TO STATE'S
MOTION FOR SUMMARY JUDGMENT - 1**

2. Attached hereto as Exhibit 1 is a true and accurate copy of the Idaho State Attorney General's "Petition for Appointment of Guardian/Conservator," from the Court's records in *In re Simpson*, Idaho State District Court for Bingham County, No. CV-2012-0862.

3. Attached hereto as Exhibit 2 is a true and accurate copy of the Idaho State Medical Doctor Letter to Court, Idaho State Attorney General's "Petition for Appointment of Guardian/Conservator," from the Court's records in *In re Simpson*, Idaho State District Court for Bingham County, No. CV-2012-0862.

4. Attached hereto as Exhibit 3 is a true and accurate copy of the Court Visitor's Report, Idaho State Attorney General's "Petition for Appointment of Guardian/Conservator," from the Court's records in *In re Simpson*, Idaho State District Court for Bingham County, No. CV-2012-0862.

5. Attached hereto as Exhibit 4 is a true and accurate copy of the State Critical Incident Report, prepared by Heath Sommer (Program Lead, State Health and Welfare Adult Mental Health), Sept. 28, 2010 [day after Simpson shot Mitchell], that was produced by the State (State Document Production No. 00130).

6. Attached hereto as Exhibit 5 is a true and complete copy of the State of Idaho's Answers to Plaintiff's Interrogatories.

7. Attached hereto as Exhibit 6 are true and complete copies of photographs of Simpson with a gun, that were produced by the State (State Document Production Nos. 00173, 00174) in response to Plaintiff's Document Requests.

8. Attached hereto as Exhibit 7 is a true copy of excerpts from the Pocatello Police Report, that were produced by the State (State Document Production Nos. 00131, 00165).

AFFIDAVIT OF SALLY ANDERSON IN SUPPORT OF PLAINTIFF'S OPPOSITION TO STATE'S MOTION FOR SUMMARY JUDGMENT - 2

9. Attached hereto as Exhibit 8 is a true and accurate copy of the Criminal Complaint, from the Court's records in *State v. Gerald Durk Simpson*, Idaho State District Court for Bannock County, Case No. CR-2010-15926FE.

10. Attached hereto as Exhibit 9 is a true and accurate copy of a report prepared by a State official as part of his duties at the Pocatello State Health and Welfare office, produced by the State (State Document Production Nos. 00124-00125).

11. Attached hereto as Exhibit 10 is a true and accurate copy of an email from Idaho State Attorney General's Office, dated April 10, 2012, produced by the State (State Document Production Nos. 00008-00009).

12. Attached hereto as Exhibit 11 is a true and accurate copy of emails discussing the release of Simpson and the dismissal of the criminal charge, dated July 13, 2010, produced by the State (State Document Production No. 00018).

13. Attached hereto as Exhibit 12 is a true and accurate copy of the State of Idaho's Response to Plaintiff's Document Requests.

14. Attached hereto as Exhibit 13 is a true and accurate copy of the State of Idaho's Response to Plaintiff's Requests for Admission.

15. Attached hereto as Exhibit 14 is a true and complete copy of a Meet and Confer letter to the State's attorneys, dated July 23, 2013.

16. Attached hereto as Exhibit 15 is a true and complete copy of a Rule 30(b)(6) Deposition Notice to the State of Idaho.

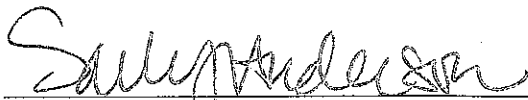
17. Attached hereto as Exhibit 16 is a true and complete copy of a Deposition Notice and Subpoena to Dr. Heath Sommer, a former State employee.

18. Attached hereto as Exhibit 17 is a true and correct copy of the State of Idaho's Notice of Service of Discovery Documents, July 15, 2013, that was served with the State's First Supplemental Answers to Plaintiff's First Set of Interrogatories, First Supplemental Responses to First Set of Document Requests, and Privilege and Statutory Exemption Log.

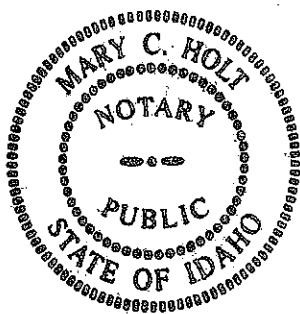
19. Attached hereto as Exhibit 18 is a true and accurate copy of the State of Idaho's First Supplemental Answers to Plaintiff's First Set of Interrogatories, July 15, 2013, with a three page excerpt from the attachment (State Production Nos. 05966-68).


20. Attached hereto as Exhibit 19 is a true and correct copy of the State of Idaho's Privilege and Statutory Exemption Log, July 15, 2013.

DATED This 26th day of July, 2013


Sally Anderson

SUBSCRIBED AND SWORN TO Before me, the undersigned Notary Public, this 26 day of July, 2013.




Notary Public for Idaho
Residing at: Boise
My Commission Expires: 10/30/18

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of July, 2013, I caused a true and correct copy of the above and foregoing instrument to be served upon the following individuals in the manner indicated below:

Susan Simpson
765 Channing Ave.
Palo Alto, CA 94301

☒ U.S. Mail
☐ Facsimile
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☐ Hand Delivery

*As Conservator and Guardian of
Gerald Durk Simpson*

Thomas B. High
Bren E. Mollerup
Benoit, Alexander, Harwood & High, LLP
126 Second Avenue North
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Twin Falls, ID 83303-0366

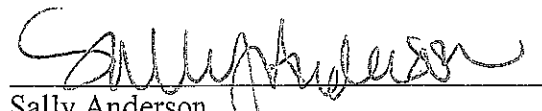
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Attorneys for Defendant State of Idaho

Ian N. Service
Bannock County Prosecutor's Office
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Pocatello, ID 83201

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☐ Email
☐ Hand Delivery

Attorneys for Defendant Bannock County


Sally Anderson,
Assistant to Briane Nelson Mitchell

LAWRENCE G. WASDEN
ATTORNEY GENERAL
STATE OF IDAHO

2012 MAY -3 PM 2:10

S. KAY CHRISTENSEN (ISB No. 3101)
DIVISION CHIEF
CONTRACTS & ADMINISTRATIVE LAW DIVISION

SARA [Signature] CLERK
BY [Signature] DEPUTY

JAMES P. PRICE (ISB No. 5129)
DEPUTY ATTORNEY GENERAL
1070 HILINE, SUITE 390
POCATELLO, IDAHO 83201
Phone: (208) 239-6255
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Attorney for Idaho Department of Health and Welfare

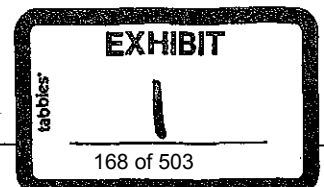
**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM**

MAGISTRATE DIVISION

In re:) Case No. CV-2012-0862
)
Simpson, Gerald Durk) **PETITION FOR APPOINTMENT OF**
) **GUARDIAN/CONSERVATOR**
)
An Incapacitated Person.)

COMES NOW, the State of Idaho, Department of Health and Welfare (Department), through counsel, and hereby petitions this Court as an interested party for the appointment of Susan Simpson as guardian/conservator for Gerald Durk Simpson ("Durk"), an incapacitated person, pursuant to Idaho Code §§ 15-5-303 and 15-5-401. In support of this petition, the Department states and alleges:

1. The Department is an interested party since Durk is currently a patient committed to the Department and residing at State Hospital South (SHS), 700 East Alice, Blackfoot, Idaho 83221. Durk's current commitment began on April 17, 2012.



2. Durk is 55 years old (date of birth is [REDACTED]). He is an incapacitated person as defined in Idaho Code § 15-5-101(a) in that he suffers from Schizophrenia, Paranoid Type. As a result of said condition, he lacks sufficient understanding or capacity to make or communicate responsible decisions regarding his person, property and affairs. Funds are needed for his support, care, welfare and protection and a conservator is necessary to assist him in using such funds.

3. Appointment of a permanent guardian and conservator is necessary and desirable as a means of providing continuing care and supervision for Durk. No other person has authority and is willing to act for Durk in the circumstances.

4. Durk receives Social Security income. His only assets are his personal affects, which are of nominal value.

5. The proposed guardian/conservator is Susan Simpson. She is Durk's sister and resides at 765 Channing Avenue, Palo Alto, California 94301.

6. There is currently no known appointed guardian or conservator for Durk.

7. It is the belief of the proposed guardian/conservator and interested parties that because of Durk's psychiatric problems, there is a need for someone to assist him in making treatment decisions and managing his funds so that he can be properly supported and cared for.

8. The plan of the proposed guardian is to ensure that Durk receives proper psychological and personal care and treatment. Durk's medical and psychiatric conditions are not likely to improve; accordingly, the need for a guardian is permanent.

WHEREFORE, Petitioner prays for this Court to:

- A. Set this petition for appointment of guardian/conservator for hearing.
- B. Appoint Susan Simpson as Gerald Durk Simpson's guardian and conservator.

- C. Appoint Angela Jensen as counsel to represent Gerald Durk Simpson.
- D. Appoint Dr. Chad Murdock, physician, to examine Gerald Durk Simpson.
- E. Appoint Holly Owens as visitor to interview Gerald Durk Simpson and the proposed guardian/conservator and prepare a report to the Court, pursuant to Idaho Code § 15-5-308.

DATED this 2nd day of May, 2012.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

BY James P. Price
James P. Price
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of May, 2012, I caused to be served a true and correct copy of the foregoing document by the following method to:

Angela Jensen
Idaho Legal Aid
150 South Arthur Suite 203
Pocatello, Idaho 83204

☒ U.S. Mail
☐ Hand Delivery
☐ Certified Mail, Return Receipt Requested
☐ Facsimile: _____

Dr. Chad Murdock
State Hospital South
P.O. Box 400
Pocatello, Idaho 83221

☒ U.S. Mail
☐ Hand Delivery
☐ Certified Mail, Return Receipt Requested
☐ Facsimile: _____

Gerald Durk Simpson
c/o State Hospital South
P.O. Box 400
Blackfoot, Idaho 83221

☐ U.S. Mail
☒ Will be Personally Served
☐ Certified Mail, Return Receipt Requested
☐ Facsimile: _____

Holly Owens
P. O. Box 182
Bancroft, Idaho 83217

☒ U.S. Mail
☐ Hand Delivery
☐ Certified Mail, Return Receipt Requested

Susan Simpson
765 Channing Avenue
Palo Alto, California 94301

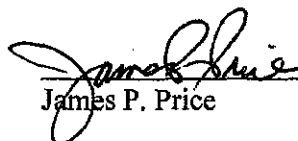
☒ U.S. Mail
☐ Hand Delivery
☐ Certified Mail, Return Receipt Requested

David Martinez
Chief Deputy Public Defender
P O Box 4147
Pocatello ID 83205

☒ U.S. Mail
☐ Will be Personally Served
☐ Certified Mail, Return Receipt Requested
☐ Facsimile: _____

Vic Pearson
Chief Deputy Prosecuting Attorney
PO Box P
Pocatello, ID 83205

☒ U.S. Mail
☐ Will be Personally Served
☐ Certified Mail, Return Receipt Requested
☐ Facsimile: _____


James P. Price



IDAHO DEPARTMENT OF HEALTH & WELFARE

C.L. "BUTCH" OTTER - Governor
RICHARD M. ARMSTRONG - Director

TRACEY G. SESSIONS - Administrative Director
STATE HOSPITAL SOUTH
700 East Alice Street
P.O. Box 400
Blackfoot, Idaho 83221-0400
PHONE 208-785-1200
FAX 208-785-8448
EMAIL sessionsT@dhw.idaho.gov

May 29, 2012

Re: Gerald Durk [REDACTED]

Re: Physician Report on Need for Guardian

Honorable Scott H. Hansen
7th District Court Magistrate Division
Bingham County
501 N. Maple
Blackfoot, Idaho 83221

MAINTENANCE DIVISION
STATE HOSPITAL SOUTH
BLACKFOOT, IDAHO 83221
Filed 6-7-12
By [Signature]

Dear Judge Hansen,

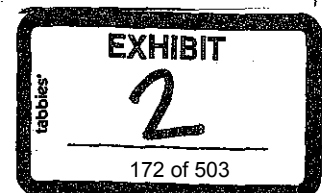
Durk has now been admitted here to State Hospital South (SHS) for restoration of competency three times since October 2010. He also has had 4 or 5 admissions here at SHS in the past before he had legal charges.

Since the time that he allegedly shot another man with a handgun on September 29, 2010, Durk has never been able to indicate that he remembered any details about his alleged crime. My review of the police records indicates that Durk was quite psychotic at the time of his alleged crime. I think the reason that he can not remember any details is because of his degree of psychosis at the time. Reports indicate that he had not been on any antipsychotic medication when his alleged crime occurred.

However, by the time Durk arrived here in October 2010 after being treated at Canyon View with the antipsychotic, Zyprexa, he did not manifest any active psychotic symptoms. However, he had Tardive Dyskinesia, an involuntary movement disorder caused by his history of being on antipsychotics. Because of his Tardive Dyskinesia, he was taken off of his antipsychotics. He did not have recurrence of positive psychotic symptoms so he was discharged without antipsychotic treatment.

However, when Durk returned here in March 2011 he had become actively psychotic again. He was being treated again with Zyprexa in the jail before he was transferred here. Even though he was still on Zyprexa when he arrived here, he was still actively psychotic. He had been hearing 2 female voices carrying on a non-distinct conversation and calling his name at times. He had been seen talking on an imaginary phone. He was doing blank staring and was thought to be having

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-Accredited by-
THE JOINT COMMISSION



thought blocking. The question was also raised if he had an amnesic disorder related to his involvement in the shooting.

With more aggressive antipsychotic treatment with Navane, a second antipsychotic, being added to his Zyprexa, he gradually improved to the point that he stopped hallucinating and showed no active psychotic symptoms. He still had blank staring, but it only occurred when he was asked about details of his crime. At those times he did not respond. However, when he was asked about other details about his life or about memory related mental status questions he gave appropriate responses without any evidence of memory impairment.

He became active in recreational and social activities. He was very calm. He was gentle and pleasant. He showed no signs of active psychosis for the last several months of his hospital stay. However, he continued to be a very simple man who did not seem able to get the big picture and had impaired judgment and insight. He did not really understand or recognize that he has a mental illness and that he could relapse if he did not take his medication. He did understand basic concepts about how the court system works and what attorneys and the judge do.

During that admission IQ testing was done and he was found to have an IQ of 99. (This is the middle range of an average IQ.) Outwardly he looked like he would have an IQ below that.

After Durk was discharged from us in November 2011 his Zyprexa dose was reduced for unknown reasons, but he was continued on his same Navane dose.

When he arrived here again this April, he said he could see the world "through a microscope and a telescope." He admitted auditory hallucinations which were "the sounds of birds singing." He said he loved the outdoors and that hearing birds "reminds me of better times." He denied paranoia and said that he felt safe in the hospital. His thinking was more disorganized because he was confused about the fact that he had been at the Bannock County jail since he left here in November. He also had long pauses before he responded and mild blank staring. His affect was more constricted than when he left last November. He showed mild cognitive impairment on a Montreal Cognitive Assessment. This test has a possible of 30 points and a score of 26 or above is considered normal. His score of 24 is actually surprising because he does not look like he would be able to score that well.

My impression during his current admission is that he deteriorated and had a recurrence of some milder active psychosis because of the reduction in his Zyprexa. Because of this, I raised his Zyprexa back to his previous dose before his last discharge.

He has now been back on his previous Zyprexa dose for a couple of weeks, but he is still mildly psychotic. He still has some thought disorganization. His affect is still constricted. It is not known yet how much he will improve during this admission with aggressive treatment.

His primary diagnosis is Schizophrenia. His sister has given additional history which suggests that Durk has had some autistic features since he was young. This would suggest that he probably had trouble getting the big picture of things even before he had his first psychotic episode in his late teens and early 20's. This would also explain why he still does not get the big picture even when he does not look actively psychotic. It is likely that he has an additional diagnosis of Pervasive Developmental Disorder Not Otherwise Specified.

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THE JOINT COMMISSION

I can not say how much improvement Durk will make with aggressive treatment. I do not know if he will stabilize as well as he did when we discharged him in November 2011 or not. I am sure that Durk will never have much insight about or understanding of his condition. He will never understand the importance of staying on medication and continuing to receive mental health treatment.

As long as Durk continues to be on medication and continues to be in treatment, the risk that he will ever become dangerous to others again is low. However, since he will never adequately understand his condition and have appropriate judgment and insight, he needs a guardian both for his own protection and for the protection of others. On medication he is a very gentle person. Once we are sure he is as stable as he is going to get again, he would be able to be managed in a care facility less structured and intense than a hospital setting. He also needs a guardian because he will never have the insight and understanding to accept that he needs to live in a structured setting where he can be monitored.

If you need any additional information please let me know.

Sincerely,


Chad L. Murdock MD

Holly C. Owens LSW
Court-Appointed Visitor
P.O. Box 182
Bancroft ID 83217
(208) 547-7778

FILED
JUN 11 2012
BY fe Deputy

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

IN THE MATTER OF)
)
Gerald Durk Simpson) CASE NO. CV- 2012-0862
)
An incapacitated person) Hearing Date: June 7, 2012
) Time: 1:10 p.m.

COURT VISITOR'S REPORT

TO THE ABOVE-ENTITLED HONORABLE COURT:

Pursuant to Idaho Probate Code 15-5-308, the court Appointed visitor herewith submits the following Pre-Appointment Report and Recommendation:

PROPOSED GUARDIAN:

Susan Simpson
765 Channing Ave
Palo Alto, California 94301

PROPOSED WARD:

Gerald Durk Simpson
State Hospital South
700 East Alice Street
Blackfoot, Idaho 83221

RELATIONSHIP:

Sibling/Older Sister

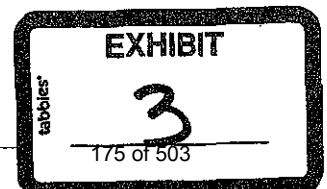
ATTORNEYS OF RECORD:

For Petitioner, Idaho Department of Health and Welfare:

James P. Price, Deputy Attorney General
Human Services Division
1070 Hilina Suite 390
Pocatello, Idaho 83201

For Proposed Ward:

Angela Jensen
Idaho Legal Aid
150 South Arthur Suite 203
Pocatello, ID 83204



REASON FOR THE PETITION: It is alleged that the purposed Ward, Gerald Simpson, is an incapacitated person as defined in Idaho Code 15-5-101 (a) in that he suffers from Schizophrenia. As a result of said condition, it is alleged that the proposed Ward lacks a sufficient understanding or capacity to make or communicate responsible decisions regarding person, property, and affairs. This incapacity allegedly extends to the Ward's estate. It is stated in the petition that funds are needed for the Ward's support, care, welfare and protection. A conservator is necessary to assist the subject in obtaining and using said funds. This proceeding is, therefore, alleged to be necessary in order to ensure that the proposed Ward's physical, medical, and financial needs are met in a consistent and appropriate manner.

DEMOGRAPHICS:

NAME: Gerald Simpson

ADDRESS: c/o State Hospital South,
P.O. Box 400 Blackfoot ID 83221

[REDACTED] [REDACTED]

MARITAL STATUS: Gerald Simpson is a single person at the present time and has never been married. Gerald's sister reports that he had a girlfriend at one time years ago.

CHILDREN: Gerald Simpson has no known identified children.

RELIGIOUS PREFERENCE: Gerald Simpson is non-practicing catholic. His family attended church when he was young before his father suicide, and since a few years before his father suicide his family stopped attending church regularly.

EDUCATION: Gerald Simpson graduated from Highland High School in Pocatello, Idaho in 1975. Shortly after high school, Gerald joined the military and received a medical discharged for Catatonic Schizophrenia. Gerald later recovered from the catatonic state of Schizophrenia, yet never received any more formal education.

EMPLOYMENT HISTORY: Mr. Simpson receives Social Security Disability and has not been able to obtain regular employment throughout his adult life. Outside of his short time in the military his only known employment was to help a landlord with some odds and ends tasks and chores in which his landlord paid him.

FAMILY BACKGROUND: Mr. Simpson has an older sister, Susan Simpson, who has two grown children. Susan works as a Program Analyst and lives in California. Susan was formally educated and worked as a registered nurse for several years. Susan is the proposed Guardian for Mr. Simpson. Mr. Simpson has a younger sister, Cindy Simpson, who is homeless and living in a shelter in the State of Washington, as far as her family knows at this time. Mr. Simpson has been visited regularly by his father's youngest brother, Marvin Simpson, and by his paternal aunt, Rita

Swenson, whom is also his father's sibling at the State Hospital South. Susan Simpson reports that when the children were growing up, the family home was very abusive and their parents were abusive towards Gerald during his childhood. When they were children, the family moved every year. Their father committed suicide when Gerald was around 11 years old. Although the children did not actually see their father's body, after his suicide according to Susan the children were with their mother when their mother discovered there father's body. Susan felt that this incident was very traumatic to Gerald in his childhood. Susan stated that she suspects that Gerald may be autistic or at least on the autistic spectrum and his childhood was very difficult for their mother to cope with. Susan stated that Gerald was always very withdrawn and seemed to be somewhat in his own world. Progressively Susan reports that Gerald's isolation from others got worse as he became an adolescent. Susan stated that she felt their mother emotionally abandoned Gerald and encouraged both her and their sister, Cindy, to do the same during Gerald's childhood and adolescence.

INCOME AND ASSETS: Gerald's only income is his Social Security Disability; he has no known assets. According to the proposed Guardian, Susan Simpson, Gerald has some belongings that may have been placed in a storage unit by Gerald's landlord; however, she is unaware of where of the location of these belongings. Susan does not know the name of the landlord or how to contact him but would welcome assistance from the court in this matter if possible.

NATURE DEGREE AND CAUSE OF INCAPACITY: The purposed Ward's primary diagnosis is Paranoid Schizophrenic Psychotic Disorder. In late September 2010, Gerald allegedly shot a gun from his apartment complex towards a coffee shop after becoming agitated by a loud motorcycle outside of his home. Gerald allegedly shot towards the coffee shop in which a man was injured by the bullet in his back but later recovered. Gerald had been taken off of services on the known to his family as of July 1, 2010, and failed to receive any medication to manage his mental illness after that time. Gerald has been unable to manage his medications without the assistance of case managers and/or his family throughout his adult life. This incident has sparked some debate and political controversy over the State's obligation to care for persons who cannot manage mental illnesses without assistance and access to medications. Gerald has lived in and out of halfway houses and has been hospitalized at State Hospital South in the past for most of his adult life. Gerald was able to maintain an apartment for a time with some assistance from his landlord and family members. Gerald's family feels that he cannot manage his medications effectively to maintain his or others safety as indicated by the incident in September 2010. Gerald will likely need to remain in a hospital or assisted living type setting in which his medications can be monitored and given to him regularly for the remainder of his life.

REVIEW OF DOCUMENTS: This Court Visitor reviewed the documents that have been filed with the Court, relative to this proceeding. Documentation provided by the Petitioner in this matter detailing the subject's medical diagnosis, Care Plan and level of-care needs was also reviewed. This Court Visitor did not have the opportunity to review reports provided by the subject's Court Appointed Attorney, Angela Jensen, and the subject's Physician.

VISIT WITH THE PROPOSED WARD: This Court Visitor met with the Gerald Simpson, purposed Ward, in person, in a private room of State Hospital South where he is currently admitted. He was alert and conscious and able to communicate some his needs, wants or desires

with this appointed Court Visitor. Gerald seemingly became agitated easily and was unable to answer many questions about his medication or indicate ability to safely live without direct care and/or supervision.

PRESENT NEEDS ASSESSMENT: Due to the nature of the Ward's present psychiatric and medical diagnosis, he will likely require long-term placement until a potential recovery can be immanent. The proposed Ward no longer has the capacity to make placement decisions. Someone must be appointed to ensure that he is at the appropriate level of care. This will likely be necessary until the proposed Ward can recover or until his demise.

APPROPRIATENESS OF THE GUARDIAN/CONSERVATOR: It does appear that the proposed Guardian is an appropriate candidate for the appointment in this proceeding. She appears to have a working knowledge of the nature and effect of Guardianship/Conservator. Susan Simpson has stated concerns that her brother, Gerald, will need to be in a secure facility as he is no longer able to care for himself and has a higher level of need than Susan feels he can maintain safely living independently. Susan stated in that she feels an assisted-living facility may be able to provide Gerald with supervision and medication management for Gerald and others safety. Gerald is no longer able to care for himself and will require assistance for daily living for the remainder of his life. Given all the aforementioned, it does appear that Susan Simpson's appointment as the Guardian/Conservator in this matter would be in the proposed Ward's best interest.

FULFILMENT OF NOTICING REQUIREMENTS: It appears upon a review of this matter that noticing requirements have been met. Pursuant to Probate Code 15-5-309(a), notice of hearing shall be provided to the person alleged to be incapacitated.

EVALUATION: Based upon the information available to this Court Visitor, it does appear that the establishment of this Guardianship/Conservatorship would be in the best interest of the proposed Ward. It appears that the subject of this Petition has mental functioning deficits that significantly impact his ability to meet his own needs and to act on his own behalf in regard to his person and estate. The proposed Guardian/Conservator appears to be an appropriate candidate for consideration for appointment. Ms. Susan Simpson should be appointed as the Guardian/Conservator in this matter.

RECOMMENDATIONS:

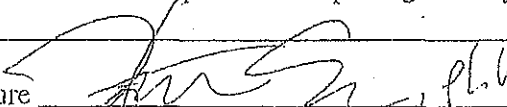
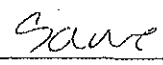
[X] The Guardianship/Conservatorship be granted as requested in the Petition.

DATED: May 30, 2012

Respectfully submitted,


Holly C. Owens LSW Court Visitor

CRITICAL INCIDENT REPORTING

Program and region submitting Report: Division of Behavioral Health, Region 6	Date of Report September 28, 2010
Client involved: Previous client, Gerald "Dirk" Simpson	
Employee(s) involved: No Adult Mental Health staff were involved with this incident.	
Provider involved: No Adult Mental Health program provider was involved in this incident.	
<p>Critical incident: On Tuesday, September 28, 2010, Detective Whitney from the Pocatello Police Department contacted the Customer Service Representative, Hans Brinker, at the Human Development Center informing him that Gerald Simpson was incarcerated, a suspect in a shooting on the previous night. Detective Whitney stated that Gerald had refused to communicate with them, and he was trying to locate a clinician or other staff member in the mental health program that might have a rapport with Gerald and would be able to establish communication regarding the shooting. Gerald (aka: Durk Simpson) had been a client with the ACT team and had been seen numerous times weekly over the course of many years. As a client, it was felt that he no longer met our priority population to serve and was mailed a closure letter June 25, 2010. He was last seen at his home by Craig Cumber, MS, on August 4 of this year.</p> <p>Mr. Simpson had been offered enhancement of services numerous times , but had clearly and repeatedly refused to receive more than general medication management. Therefore he was ultimately released from services at the Department, however, the Region VI ACT team had provided three community referrals, and had also offered ongoing peer support from the ACT team, even after closure.</p> <p>After discussion with four of Durk's previous service providers, their information would indicate that Durk had no violent tendencies or history of violence. He was seen in May 2009, carrying a firearm in public, but there has never been any evidence that he acted aggressively, inappropriately, or spoke of such hostilities prior to this current incident. Further, his carrying of a firearm in public is not inconsistent with the nature of rural townships where hunting and recreational sportsmanship is a generally accepted practice.</p>	
Person Submitting Report Signature	 Heath Sommer, PhD. Program Lead, Adult Mental Health
Program Manager Signature	

- 1) Submit completed critical incident report form to: Administrator AND Management Assistant of the Division of Family and Community Services.
- 2) Critical weekend incidents should be reported to either the Administrator or Deputy Administrator (i.e., death of a child, serious injury of a client)

May 2003



STATE 00130
179 of 503

Thomas B. High, ISB No. 2430
Bren E. Mollerup, ISB No. 7959
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Email: high@benoitlaw.com
Email: mollerup@benoitlaw.com
Attorneys for Defendant State of Idaho
(16105\Discovery\Ans to Plain 1st Set of Interrogs\TBH\ka)

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

* * * * *

RYAN M. MITCHELL,

Plaintiff,

V.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity,
and BANNOCK COUNTY, IDAHO, a
political subdivision, SUSAN SIMPSON, as
Conservator and Guardian of Gerald Durk
Simpson, and DOES 1-25,

Defendants.

Case No. CV-12-4124-OC

**ANSWERS TO PLAINTIFF'S FIRST
SET OF INTERROGATORIES TO
DEFENDANT STATE OF IDAHO**

* * * * *

COMES NOW the Defendant, STATE OF IDAHO, and answers Plaintiff's First Set of Interrogatories to Defendant State of Idaho as follows:

ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES
TO DEFENDANT STATE OF IDAHO - 1

MAUK & BURGOWNE

APR 05 2013

RECEIVED

EXHIBIT

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180 of 503

INTERROGATORY NO. 1: Identify each person who participated in the State's decision to stop providing care or services to Simpson on or around July 1, 2010, and describe everything that was considered in making that decision.

ANSWER NO. 1: It must first be noted Simpson continued to receive services until on or about August 9, 2010. The process that was used to decide to stop providing Simpson and other individuals with IDHW services is described in a letter written by Daniel Traugher and dated October 8, 2010. This letter is attached in Exhibit "B" to the document production served contemporaneously herewith. Decisions about specific clients were made by Dr. Daniel Traugher and members of the ACT Team.

Members of the ACT Team who provided services to Mr. Simpson include, Brandon Clark, Richard Bloxham, Christine Collaer-Muzzo, Craig Cumber, Myron Berghund, Dawn Peterson and Casey Locke. Dr. Daniel Traugher was also employed by AMH during the determination period and Dr. Sommer was the program lead. All except Brandon Clark, Dr. Traugher, and Dr. Sommer may be reached c/o Benoit, Alexander, Harwood & High, LLP. Brandon Clark resides at 2141 13th Street, Lewiston, Idaho 83501. Dr. Traugher and Dr. Sommer are now employed by Season of Hope, 4650 Hawthorne Road, Suite 3B, Chubbuck, Idaho, 83202, 208-273-9833.

INTERROGATORY NO. 2: Describe what Simpson was told by the State of Idaho Department of Health and Welfare when the Department stopped providing services to him on or around July 1, 2010, and identify each person who participated in communicating it to Simpson.

ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES
TO DEFENDANT STATE OF IDAHO - 2

ANSWER NO. 2: Mr. Simpson was informed that the Adult Metal Health program was designed for short term crisis intervention rather than long term treatment and that he did not meet the criteria for intensive level of services. He was informed that if he were to reach a crisis level in the future he was encouraged to submit for re-assessment. Aids for transition were also offered and Mr. Simpson was referred to a peer specialists, Martha Garrett. Mr. Simpson was also advised that if he was receiving Adult Mental Health medication that he should contact his nurse provider for a smooth transition. He was also given phone numbers for referral options.

INTERROGATORY NO. 3: Describe each follow-up visit that the State Department of Health and Welfare had with Simpson after he was dropped from its program on or around July 1, 2010.

ANSWER NO. 3: Objection. The requested documents are prohibited from disclosure under HIPPA and accompanying regulation set forth in 45 C.F.R. 164 et. seq; I.C. § 66-348; I.C. § 9-340A(2); I.C. § 9-340B(7); I.C. § 9-340C(13). Please see privilege log.

INTERROGATORY NO. 4: Describe all services that have been provided to Simpson by the Idaho State Department of Health and Welfare.

ANSWER NO. 4: ACT Team members delivered medications to Simpson's home, observed him take medications, taught him shopping skills and took him shopping, helped him with his budgeting, and provided him with training in social and other daily living skills.

INTERROGATORY NO. 5: Describe all services that were provided to Simpson through the Idaho Assertive Community Treatment program.

ANSWER NO. 5: ACT Team members delivered medications to Simpson's home, observed him take medications, taught him shopping skills and took him shopping, helped him

ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES
TO DEFENDANT STATE OF IDAHO - 3

with his budgeting, and provided him with training in social and other daily living skills.

INTERROGATORY NO. 6: Describe each medical diagnosis, treatment and/or prescription for Simpson as well as identify the person who made the diagnosis and/or prescription.

ANSWER NO. 6: Objection. The requested information is prohibited from disclosure under HIPPA and accompanying regulation set forth in 45 C.F.R. 164 et. seq; I.C. § 66-348; I.C. § 9-340A(2); I.C. § 9-340B(7); I.C. § 9-340C(13).

INTERROGATORY NO. 7: Identify each person who knew that Simpson had guns prior to September 27, 2010.

ANSWER NO. 7: ACT Team members never saw guns in Simpson's apartment. In approximately May 2009, Christine Collaer-Muzzo and Richard Bloxham saw Simpson walking in town with what appeared to be a gun. A photograph of him with the gun was posted where other Adult Mental Health staff could have seen it. No one knew if the gun belonged to Simpson.

INTERROGATORY NO. 8: Describe each prior arrest of, or criminal charge against, Simpson prior to September 28, 2010.

ANSWER NO. 8: Simpson was cited in 1995 for willful concealment (shoplifting) and in 1998 and 1999 for failing to provide proof of automobile insurance. Please see the repository attached to the Responses to Requests for Production.

INTERROGATORY NO. 9: Describe all efforts that the State of Idaho made to provide notice to Mr. Mitchell of the Bingham County Court proceeding that the State of Idaho initiated for Simpson in 2012.

ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES
TO DEFENDANT STATE OF IDAHO - 4

ANSWER NO. 9: Objection. This Interrogatory assumes that notice was legally required. Without waiving the same, the State did not provide any such notice.

INTERROGATORY NO. 10: Describe all efforts that the State of Idaho made to provide Mr. Mitchell with his victim rights as guaranteed by the Idaho Constitution and statutory law.

ANSWER NO. 10: Objection. This interrogatory assumes that the State had a legal duty.

INTERROGATORY NO. 11: Identify each person who reviewed or looked at Simpson's file or records (and their reasons for doing so) following the shooting of Mr. Mitchell on September 27, 2010.

ANSWER NO. 11: Defendant objects to this Interrogatory to the extent it calls for privileged attorney client communications and/or work product. Without waving the same, following the shooting, Mr. Simpsons hard copy records at the Human Development Center were taken to the Medical Records Department at State Hospital South for safekeeping. At that time, the Health Information Manager, Cindy Allred, and the Deputy Attorney General, James Price, quickly paged through the records to see what kind of records were there.

Access to Simpson's electronic Adult Mental Health records was restricted, but copies were made for and reviewed by the Deputy Attorney General in anticipation of a tort claim and litigation. Simpson's records at State Hospital South were accessed by a number of individuals for the purpose of providing care to him while he was hospitalized. A printout of those who accessed his records at State Hospital South is attached hereto as Exhibit "A."

ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES
TO DEFENDANT STATE OF IDAHO - 5

INTERROGATORY NO. 12: Describe any communications with Simpson or his representatives relating to Simpson's release from custody.

ANSWER NO. 12: For purposes of clarification, Simpson's commitment under 18-212 expired; he was not released from custody. David Williams, Unit Supervisor at State Hospital South, and Susan Simpson discussed discharge planning issues related to Simpson.

Tracy Beeton and Susan Simpson exchanged emails on July 9, 2012, about Susan flying to Idaho to assist Simpson in his transition to an Assisted Living home. Tracy Beeton also sent an email to a Bingham County court clerk on July 10, 2012, indicating that Simpson was being moved to an assisted living facility. On July 11, 2012, Tracy sent an email to Susan, indicating that her office was waiting for word from the prosecutor's office as to whether it would approve Simpson's move to the new facility. These emails were disclosed pursuant to the public records request.

INTERROGATORY NO. 13: Describe any communications with Bannock County or its representatives relating to Simpson's release from custody.

ANSWER NO. 13: There were discussions with Vic Pearson at the Bannock County Prosecutor's office prior to Simpson's commitment hearing on April 17, 2012, about the possibility that Simpson would never become fit to proceed with his criminal case nor meet the criteria for civil commitment. The State suggested that the appointment of a guardian was advisable so that the guardian could have some control over where he lived, how he was supervised, etc. should the commitment expire and Simpson not be civilly committed.

Vic agreed to allow the State to pursue the appointment of Susan Simpson as Simpson's guardian. As the expiration of Simpson's commitment approached, Bannock

ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES
TO DEFENDANT STATE OF IDAHO - 6

County (Vic Pearson) agreed to Simpson being placed in an assisted living center by his guardian.

INTERROGATORY NO. 14: Describe any communications with Simpson or his representatives relating to the dismissal of the criminal charges against Simpson.

ANSWER NO. 14: The prosecutor's office (Vic Pearson) indicated that they would not be dismissing the criminal charges. Susan Simpson responded the same day, inquiring what the implications would be for Simpson if the charges were not dropped. Tracy Beeton emailed a reply that day, stating "at this point just wait to see what happens." A copy of these emails are contained in Exhibit "A" attached to the Responses to Requests for Production.

INTERROGATORY NO. 15: Describe any communications with Bannock County or its representatives relating to the dismissal of the criminal charges against Simpson.

ANSWER NO. 15: During a telephone conversation with Vic Pearson of the Bannock County Prosecuting Attorney's office on July 13, 2012, he indicated that he would not be dismissing the criminal charges against Simpson.

INTERROGATORY NO. 16: Describe any communications with the Bannock County Court by the Idaho Attorney General's Office or the Idaho Department of Health and Welfare relating to the dismissal of criminal charges against Simpson or his release from custody.

ANSWER NO. 16: Objection. The requested documents are prohibited from disclosure under HIPPA and accompanying regulation set forth in 45 C.F.R. 164 et. seq; I.C. § 66-348; I.C. § 9-340A(2); I.C. § 9-340B(7); I.C. § 9-340C(13). Please see answers to Interrogatories 14 and 15..

ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES
TO DEFENDANT STATE OF IDAHO - 7

INTERROGATORY NO. 17: Identify each court proceeding that the State of Idaho has filed to obtain the appointment of conservator and/or guardianship for anyone who is facing criminal charges.

ANSWER NO. 17: Objection. The requested documents are prohibited from disclosure under HIPPA and accompanying regulation set forth in 45 C.F.R. 164 et. seq; I.C. § 66-348; I.C. § 9-340A(2); I.C. § 9-340B(7); I.C. § 9-340C(13). Without waiving the same, Defendant states that since 2005 the State has filed 32 conservatorship/guardianship proceedings for patients at State Hospital South or clients of Adult Mental Health in Region Six.

INTERROGATORY NO. 18: Identify the location where Simpson is currently residing.

ANSWER NO. 18: Objection. The requested documents are prohibited from disclosure under HIPPA and accompanying regulation set forth in 45 C.F.R. 164 et. seq; I.C. § 66-348; I.C. § 9-340A(2); I.C. § 9-340B(7); I.C. § 9-340C(13). Without waiving the same, Simpson was discharged from State Hospital South on July 16, 2012, to Lighthouse Living, 1005 Airport Road, Blackfoot, Idaho 83221.

INTERROGATORY NO. 19: Describe any limitations or restrictions that have been placed on Simpson's freedom by the State.

ANSWER NO. 19: The State does not have the authority to place limitations or restrictions on Simpson because he is not in its custody.

ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES
TO DEFENDANT STATE OF IDAHO - 8

DATED this 1 day of April, 2013.

STATE OF IDAHO

By

Tracey Sessions - Behavioral Health East Hub
Administrative Director and Hospital Administrator
for State Hospital South

STATE OF IDAHO)
) ss.
County of Bannock)

Tracey Sessions, being first duly sworn on oath, deposes and says:

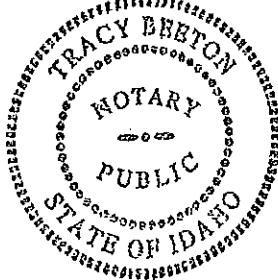
That I am the Behavioral Health East Hub Administrative Director and Hospital Administrator for State Hospital South for the State of Idaho; that I have read the foregoing ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANT STATE OF IDAHO, know the contents thereof, and believe the same to be true based upon my information and belief.

STATE OF IDAHO

By

Tracey Sessions - Behavioral Health East Hub
Administrative Director and Hospital Administrator
for State Hospital South

SUBSCRIBED AND SWORN to before me this 15th day of April, 2013.



NOTARY PUBLIC

Residing at: Barnack County
My Commission Expires: April 9, 2017

ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES
TO DEFENDANT STATE OF IDAHO - 9

Rule 26(f) Certification.

DATED this 2nd day of April, 2013.

BENOIT, ALEXANDER, HARWOOD
& HIGH, L.L.P.

By


Thomas B. High

Attorneys for Defendant State of Idaho

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 2nd day of April, 2013, he caused a true and correct copy of the **ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANT STATE OF IDAHO** to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743
(Attorneys for Plaintiff)

Hand Delivered ☐
U.S. Mail ☒
Fax ☐
Fed. Express ☐


Thomas B. High

ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES
TO DEFENDANT STATE OF IDAHO - 10

STATE 00173

EXHIBIT

190

6

tabbles

09/29/10
13:12

Pocatello Police Department
Detail Incident Report

Page: 23

Incident #: 10-P21410

Item Type: GSR KIT	Property Number: P127016
Item/Brand:	Model:
Serial Number:	Color: /
Characteristics:	
Quantity:	Meas: Total Value: 0.00
Local Status: Evidence in Storage	
Owner ID Number: 66234 Owner Name: SIMPSON, GERALD	

PRESUMPTIVE TEST GIVEN/POSITIVE/LABORATORY TEST TAKEN SAVED FOR POSSIBLE LAB

VEHICLE INFORMATION:

Owner ID Number:	Owner Name: ,
Vehicle Number: P144098	License Plate: MHX690
VIN : SP400100526	State: ID Expires : 12/31/10
Year: 1980 Make: SUZI Model: SP400	Type: MC Color: RED / Doors: 0
Value: 0.00	Characteristics:

VEHICLE VICTIM MOTORCYCLE TAKEN AS EVIDENCE AND TOWED TO THE PPD FOR EVIDENTIARY PROCESSING.

NARRATIVE:

OFFICER: B.HARRIS #5214 DICTATED: 09-28-10 @ 0510 HRS

INVESTIGATIVE TIME: 7 HRS
LAW INCIDENT #: 10-P21410
STENO INITIALS: SG
DATE & TIME
TRANSCRIBED: 09-28-10 @ 0820 HRS

#3 - ASSAULT INVESTIGATION NARRATIVE:

1. BRIEF SYNOPSIS OF INCIDENT:

On 09-27-10 at approximately 2200 hours, I responded to 546 South 5th Avenue at the Mocha Madness business for a report of a male inside the business who was suffering from a gunshot wound. Prior to my arrival, patrol officers had secured the scene and emergency medical services personnel were on scene treating the victim, who was identified as RYAN M. MITCHELL. MITCHELL was transported to the Pocatello Regional Medical Center for emergency medical treatment. At the time of this report, MITCHELL was in stable condition and it appears he will recover from his injuries. MITCHELL was suffering from a single entry wound in the mid-left side of his back. The wound appeared to have been caused by a small caliber bullet, approximately 6/8 centimeters in width. This

EXHIBIT

7

09/29/10
13:12

Pocatello Police Department
Detail Incident Report

Page: 23
4

Incident #: 10-P21410

would have MYRON BURGLUND get ahold of me as soon as possible. I contacted FRE COLLINGS (unknown spelling) of the Board of Pharmacy, at 208-334-2356 to see if he had any record of SIMPSON'S medications, or what doctors may be treating SIMPSON. COLLINGS said there is nothing in his database regarding controlled substances. COLLINGS provided me with a phone number for Medicaid, of 364-1837, and suggested that I speak with CODY, (unknown last name) who is in charge of the walk-in program.

I called Shaver Pharmacy and spoke with Pharmacist LORI GEBO SHAVER. GEBO-SHAVER said that she is familiar with SIMPSON, and that the ACT team of Region VI Mental Health has been dealing with SIMPSON. GEBO-SHAVER said that SIMPSON has been non-compliant in taking his medication. She explained that SIMPSON last filled his medications on 07-07-10. She said it was a month's supply and they were expecting him back into the pharmacy by 08-07-10. GEBO-SHAVER said that she estimates that SIMPSON has not had access to his medication for approximately two months. GEBO-SHAVER said that SIMPSON is supposed to be taking Zyprexa .20 mg which is an anti-psychotic medication. She said he is also supposed to be taking Cogentin 1 mg, in order to counter balance the tremors and Parkinson's like symptoms that are a side effect of taking Zyprexa. GEBO-SHAVER said that SIMPSON also takes two medications for blood pressure. GEBO-SHAVER said the ACT team physician who originally prescribed the medication was LINDA CARTER, but that she has since retired. GEBO-SHAVER said that KEBAL BELLS, a Physician's Assistant, took over for CARTER. GEBO-SHAVER said that according to her records, BELLS last saw SIMPSON on 05-04-10. GEBO-SHAVER said that Dr. DAN JONES of Pocatello Family Medicine is the doctor who monitors and prescribes for SIMPSON'S issues with blood pressure.

I received a call from Dr. HEATH SOMMER, who identified himself as the program manager for Adult Mental Health in Pocatello. Dr. SOMMER said that he is a clinical psychologist. Dr. SOMMER called me on a conference call with MYRON BURGLUND, who identified himself as a licensed social worker. Dr. SOMMER and BURGLUND said that without an Order from a Judge, they could not discuss SIMPSON'S medical conditions. Dr. SOMMER said if necessary, he could come to the Pocatello Police Department where he could render a short-term competency decision regarding SIMPSON'S current state of mental health. I informed Dr. SOMMER that I would contact him if we needed anything further.

Evidence Technicians processed SIMPSON'S hands for gunshot residue as the presumptive test started to show positive results I took a total of three digital photographs as requested by the evidence technician. I downloaded these to the files section of this report.

I met with Lieutenant MARCHAND and Sergeant NELSON regarding the issue of trajectory of the rounds that were fired in this case. They informed me they would like to reconstruct the trajectory of the rounds that were fired and stated that I could request outside assistance if necessary. I contacted Detective JEFF PRATT of the Idaho Falls Police Department. I was provided with information that PRATT had experience with crime scene reconstruction regarding trajectory. I contacted Detective PRATT and he informed me that he would be willing to respond as soon as possible to assist us. Detective PRATT said that he would be bringing a fellow co-worker, Detective STEVE AVERY, to assist. Detectives had an additional briefing, updating information regarding this case. I briefed the detectives with information that I had learned about SIMPSON'S history regarding mental health. It was decided that SIMPSON be taken to Pocatello Regional Medical Center for a mental health evaluation.

ORIGINAL

MARK L. HIEDEMAN
BANNOCK COUNTY PROSECUTOR
P.O. BOX P
POCATELLO, ID 83205-0050
(208) 236-7280

FILED
BANNOCK COUNTY
CLERK OF DISTRICT COURT
2010 SEP 30 AM 11:07
DEPUTY CLERK

VIC A. PEARSON, ISB #6429
Chief Deputy Prosecuting Attorney

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

STATE OF IDAHO,

Plaintiff,

vs.

GERALD DURK SIMPSON,
[REDACTED]
[REDACTED]

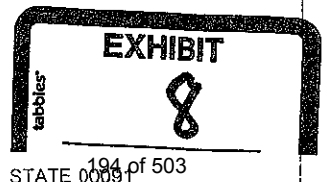
Defendant.

CR-2010-15926FE

COMPLAINT - CRIMINAL

NOTICE IS HEREBY GIVEN that, in addition to the offense charged herein, the State of Idaho will seek the enhancement penalty, pursuant to Idaho Code §19-2520, for the use of a deadly weapon in the commission of a crime.

Personally appeared before me this 30th day of September, 2010, VIC A. PEARSON in the County of Bannock, who, first being duly sworn, complains of GERALD DURK SIMPSON and charges the defendant with the public offense of AGGRAVATED BATTERY, Idaho Code §18-903 (a) and §18-907(1)(a) and/or (b), committed as follows, to-wit:



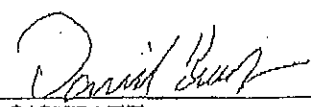
That the said GERALD DURK SIMPSON, in the County of Bannock, State of Idaho, on or about the 27th day of September, 2010, did willfully and unlawfully use force or violence upon the person of another, Ryan Mitchell, by either the use of a deadly weapon or instrument and/or causing great bodily harm or permanent disability or permanent disfigurement by shooting Ryan Mitchell in the back.

All of which is contrary to the form of the statute in said State made and provided and against the peace and dignity of the State of Idaho.

Said complainant prays that a Warrant be issued for the arrest of the said GERALD DURK SIMPSON that the defendant may be dealt with according to law.


VIC A. PEARSON

SUBSCRIBED AND SWORN to before me this 30th day of September,
2010.


MAGISTRATE

Beeton, Tracy - Reg6

From: Chadwick, Sue - Reg6
Sent: Tuesday, November 16, 2010 4:20 PM
To: Sessions, Tracey G. - SHS
Subject: FW: Patient closures and some thoughts on our moving forward from Heath Sommer
Importance: High

Here it is. This email was sent the day before the closure letters were actually mailed.

Sue Chadwick
 Office Services Supervisor

From: Chadwick, Sue - Reg6
Sent: Thursday, June 24, 2010 12:35 PM
To: Berglund, Myron - Reg6; Bloxham, Richard - Reg6; Clark, Brandon W. - Reg6; Collaer-Muzzo, Christine - Reg6; Cumber, Craig - Reg6; Locke, Casey - Reg6; Peterson, Dawn M. - Reg6; Axford, Ed - Reg6; Bigler, Richard D. - Reg6; Bills, Kebai D. - Reg6; Busenbark, Jamie - Reg6; Chadwick, Sue - Reg6; Cottrell, Cindy - Reg6; Eckersell, Will J. - Reg6; Hapke, Karon - Reg6; Jones, Shannon - Reg6; Knapp, Tonja M. - Reg6; Miller, Anne - Reg6; Sommer, Heath - Reg6; Traughber, Daniel - Reg6; Weatherspoon, David - Reg6; Brinker, Hans B. - Reg6; Busacker, Kevin - Reg6; Chadwick, Sue - Reg6; Germer, Deidria - Reg6; Schuder, Kim - Reg6; Wilson, Cindy L. - Reg6; Williams, Sy B. - Reg6; Boyd, Norma - Reg6; Browning, Mindy - Reg6; Call, Brent - Reg6; Carter, Colby - Reg6; Clark, Stephanie - SHS; Cox, Liva - Reg6; Garrett, Martha - Reg6; Gibson, Lyn - Reg6; Hess, Jennifer - Reg6; Isaacson, Justice - Reg6; Jensen, Denise - Reg6; Konecky, Brian - Reg6; Legarreta, Margaret - Reg6; Lindsey, Kati - Reg6; Martin, Jessica - Reg6; Martinez, JoAnne - Reg6; McCall, Amy - Reg6; Meiners, Erika - Reg6; Rasmussen, Kimberly - Reg6; Russell, Josie - Reg6; Schmidt, Darren - Reg6; Strain, Misty - Reg6; Stratton, Hilary - Reg6; Taylor, Kinsey - Reg6; Van Wyk, Patrick - Reg6; Warren, Mallori - Reg6; Weiss, April - Reg6; Whitaker, Brandi - Reg6
Cc: Weers, Ritchie C. - Reg6
Subject: Patient closures and some thoughts on our moving forward from Heath Sommer
Importance: High

As you know, for more than two years as a management and regional treatment team there has been much discussion about how to move forward with the diminished resources we have and yet increasing demand. Sometimes it is the job of a manager, after listening carefully to the many thoughts from all who speak them, to make a decision as best he or she can with the hope that such a decision will be for the betterment of the corporation and its consumers. After spending three years studying in depth the statistical and human interest data comprising the adult mental health program, I have become convinced of a few things:

1. We do not have enough clinical or technical support staff to meet the current demand we are experiencing
2. Because of our client-to-staff ratio we are providing less than the standard of treatment to nearly all individuals in our Programs
3. We are not complying with mandatory paperwork and billing guidelines
4. We are not complying with mandatory legal guidelines
5. We are not in compliance with our own Departmental guidelines
6. Staff are overworking/ working through breaks and lunches, on holidays and weekends, to attempt to keep up with their duties
7. Staff are experiencing increasing distress and demoralization given the rigorous work load and demands



I recognize that staff may not all have the same or shared viewpoint with the above, and I suppose that sometimes it is difficult when someone—anyone—makes a final decision regarding patient closures, however, the time has come that the decision has been made and beginning next week many individuals will receive letters from this department, with my signature affixed, informing them that they are no longer eligible for services at the IDHW.

As we move forward with this decision, hopefully staff will consider:

1. This is not a decision that was caused by budget cuts alone. Yes less personnel and funding have reduced the amount of service we can do, but Health and Welfare has always been a short term treatment provider, ... we just have historically had difficulty following our own policies. Quoting from our own Region VI mental health contract, Region VI only provides treatment to "acute psychiatric crisis that may result in inpatient psychiatric care...only short term treatment or intervention not to exceed 120 days is provided."
2. Clients who are being closed may access Martha Garrett for an unlimited time to help place them in community referral sources
3. Clients are being advised that if they disagree they may contact IDHW to appeal their decision, although the decision to allow a client to stay open **MUST BE APPROVED BY A MANAGER**
4. Clients are, of course, always welcome to schedule a new intake at any time, if their symptoms worsen.

Please, if any staff has a personal concern not addressed in this email, feel free to come visit with me, and I would be happy to speak with you more. Personally, I believe that while a heavy decision, this is the most effective, humane direction for our region to proceed at this time, and I thank you for your patience and willingness to serve others during these last difficult years we have all experienced. I believe, and time will be the judge, that the decision we make today, will best preserve what we do for the largest amount of people toward meaningful and sustained recovery for persons with mental illness within our borders.

Respectfully,

Heath Sommer

Heath Sommer, Ph.D.
 Program Lead
 State of Idaho Department of Health & Welfare
 Region VI Division of Behavioral Health
 421 Memorial Drive
 Pocatello, ID 83201
 (208) 234-7900 phone
 (208) 236-6328 fax

Sue Chadwick
 Office Services Supervisor

Beeton, Tracy - Reg6

From: Beeton, Tracy - Reg6
Sent: Tuesday, April 10, 2012 11:38 AM
To: 'susan_simpson@elcaminohospital.org'
Subject: Guardianship Information
Importance: High
Attachments: Simpson Petition.pdf; Simpson - Acceptance.pdf

Dear Ms. Simpson:

I understand that you have agreed to be the guardian/conservator for your brother, Durk. In preparation for the guardianship/conservatorship hearing scheduled on June 7, 2012, there are a few items we will need you to do.

Please review the attached Petition for Appointment of Guardian/Conservator and Acceptance of Appointment of Guardianship and Conservator for Durk. If you agree with the content of both documents, please have your signature on the Acceptance notarized and return the notarized original to my office prior to April 27, 2012.

Mr. Price informed me that you had a concern regarding the cost of filing for Guardianship/Conservatorship. To assist in this process, the following arrangements have been made so there will be no out-of-pocket costs for you.

- Our office will be completing all necessary court documents for the hearing.
- Idaho Legal Aid will be able to provide the legal report to the court.
- The Visitor's Report (which is required by law) cost \$250 and will initially be paid by State Hospital South; however, upon completion of the hearing, you will be billed this \$250, which you should pay out of Durk's account. *Please note, the \$250 will not be billed to you until the Conservator is in place and you are able to access his funds.*

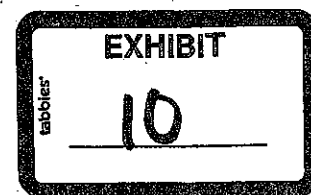
In preparing for the hearing, you will receive calls from Angela Jensen, Idaho Legal Aid, and Holly Owens, Court Appointed Visitor. They will gather information from both you and Durk and report their findings to the Court.

The State of Idaho requires all proposed guardians/conservators complete an online course. Upon receiving the course information from the court, you will need to complete both the guardianship section and the conservator section of the course prior to the hearing. I ask that you please try to have the course completed by May 11, 2012, and mail copies of the certificates to my office.

You will also be required to participate by phone in the hearing scheduled on June 7, 2012, at 1:10 p.m. MST. The court will contact you at the above noted time. The phone number we have on file for you is 650-207-0091. If this phone number is not correct or there is another number you would prefer they call, please email me the corrected number prior to the hearing.

The items noted above should be mailed to our office at:

James P. Price
Deputy Attorney General
1070 Hiline Suite 390



Pocatello, Idaho 83201

Thank you and if you have questions or concerns, please do not hesitate to contact me at 208-239-6255 or beetont@dhw.idaho.gov

Tracy Beeton
Administrative Assistant II
Office of Deputy Attorney General
James P. Price
(208) 239-6255
beetont@dhw.idaho.gov

Price, James P. - Reg6

From: Susan Simpson <Susan_Simpson@elcaminohospital.org>
Sent: Friday, July 13, 2012 11:40 AM
To: Beeton, Tracy - Reg6; Doran, Susan K. - Reg7; Williams, David - SHS; Berggren, Vicky L. - SHS
Cc: Sessions, Tracey G. - SHS; Baker, Richard T. - SHS; Price, James P. - Reg6
Subject: RE: Durk Simpson

I will try to make reservations to come to Blackfoot the week of July 24.

If the charges are not dropped, what is the implication for Durk?

Thanks!

Susan

From: Beeton, Tracy - Reg6 [<mailto:BeetonT@dhw.idaho.gov>]
Sent: Friday, July 13, 2012 10:37 AM
To: Susan Simpson; Doran, Susan K. - Reg7; Williams, David - SHS; Berggren, Vicky L. - SHS
Cc: Sessions, Tracey G. - SHS; Baker, Richard T. - SHS; Price, James P. - Reg6
Subject: Durk Simpson
Importance: High

We can proceed with Durk's move on Monday, July 16.

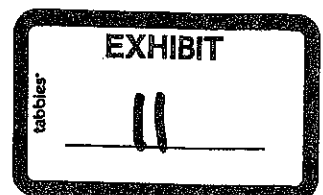
Mr. Price just got off the phone with Prosecutor's office. They will not stop his planned move on Monday, but also will not be dismissing the criminal charges.

I faxed the final report from State Hospital South to the Judge, Prosecutor and Defense Attorney this morning.

If I can be of any further assistance, please let me know.

Tracy Beeton
Administrative Assistant II
Office of Deputy Attorney General
James P. Price
(208) 239-6255
beetont@dhw.idaho.gov

Notice: This e-mail, including attachments, is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521, is confidential and may be legally privileged or otherwise protected from disclosure. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply to the sender that you have received the message in error, and delete it. Thank you.



STA 20000603

Thomas B. High, ISB No. 2430
Bren E. Mollerup, ISB No. 7959
BENOIT, ALEXANDER,
HARWOOD & HIGH, L.L.P.
126 Second Avenue North
P.O. Box 366
Twin Falls, Idaho 83303-0366
Telephone: (208) 733-5463
Fax: (208) 734-1438
Email: high@benoitlaw.com
Email: mollerup@benoitlaw.com
Attorneys for Defendant State of Idaho
(16105\Discovery\Res to Plain 1st Set of Document Requests\TBH\ka)

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

* * * * *

RYAN M. MITCHELL,	)	Case No. CV-12-4124-OC
)	
Plaintiff,)	
)	
v.	)	RESPONSES TO PLAINTIFF'S
	)	FIRST SET OF DOCUMENT
	)	REQUESTS TO DEFENDANT
GERALD DURK SIMPSON, an individual,	)	STATE OF IDAHO
STATE OF IDAHO, a governmental entity,)	
and BANNOCK COUNTY, IDAHO, a)	
political subdivision, SUSAN SIMPSON, as)	
Conservator and Guardian of Gerald Durk)	
Simpson, and DOES 1-25,)	
)	
Defendants.)	

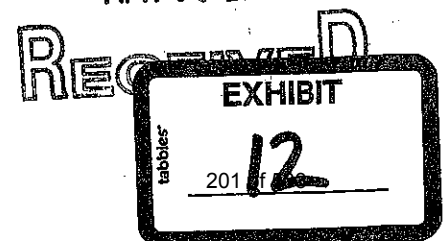
* * * * *

COMES NOW the Defendant, STATE OF IDAHO (hereinafter "State"), by and through its
counsel of record, and responds to Plaintiff's First Set of Document Requests to Defendant State of
Idaho as follows:

RESPONSES TO PLAINTIFF'S FIRST SET OF DOCUMENT
REQUESTS TO DEFENDANT STATE OF IDAHO - 1

MAUK & BURGOYNE

APR 05 2013



REQUEST FOR PRODUCTION NO. 1: Produce all documents relating to the care and treatment that the State of Idaho has provided to Simpson.

RESPONSE NO. 1: Objection. The requested documents are prohibited from disclosure under HIPPA and accompanying regulation set forth in 45 C.F.R. 164 et. seq; I.C. § 66-348; I.C. § 9-340A(2); I.C. § 9-340B(7); I.C. § 9-340C(13). Please see privilege log. However, without waiving the same, to the extent they are responsive, please see documents attached as Exhibit "A."

REQUEST FOR PRODUCTION NO. 2: Produce all documents relating to communications that discuss the release (or potential release) of Simpson.

RESPONSE NO. 2: Objection. The requested documents are prohibited from disclosure under HIPPA and accompanying regulation set forth in 45 C.F.R. 164 et. seq; I.C. § 66-348; I.C. § 9-340A(2); I.C. § 9-340B(7); I.C. § 9-340C(13) and work product and attorney client privilege doctrines. See privilege log. However, without waiving the same, to the extent they are responsive; please see documents attached as Exhibit "A."

REQUEST FOR PRODUCTION NO. 3: Produce all documents relating to communications that discuss the dismissal (or potential dismissal) of criminal charges against Simpson.

RESPONSE NO. 3: Objection. The requested documents are prohibited from disclosure under HIPPA and accompanying regulation set forth in 45 C.F.R. 164 et. seq; I.C. § 66-348; I.C. § 9-340A(2); I.C. § 9-340B(7); I.C. § 9-340C(13) and work product and attorney client privilege doctrines. Without waiving the same, and to the extent they are responsive, please see attached documents.

RESPONSES TO PLAINTIFF'S FIRST SET OF DOCUMENT
REQUESTS TO DEFENDANT STATE OF IDAHO - 2

REQUEST FOR PRODUCTION NO. 4: Produce all documents relating to the State of Idaho's decision to stop providing help or services to Simpson on or around July 1, 2010.

RESPONSE NO. 4: Objection. The requested documents are prohibited from disclosure under HIPPA and accompanying regulation set forth in 45 C.F.R. 164 et. seq; I.C. § 66-348; I.C. § 9-340A(2); I.C. § 9-340B(7); I.C. § 9-340C(13) and work product and attorney client privilege doctrines. Please see privilege log. However, without waiving the same, please see the documents attached as exhibit "B" which are not subject to the above objection.

REQUEST FOR PRODUCTION NO. 5: Produce all documents relating to any effort the State of Idaho made to place Simpson in a new program during the summer of 2010.

RESPONSE NO. 5: Objection. The requested documents are prohibited from disclosure under HIPPA and accompanying regulation set forth in 45 C.F.R. 164 et. seq; I.C. § 66-348; I.C. § 9-340A(2); I.C. § 9-340B(7); I.C. § 9-340C(13). Please see privilege log. Additionally the term "Place" in this Request suggests that the State had the authority to involuntarily put Simpson into a program. The State had no such authority since Simpson was not in its custody. All individuals terminated from the program were referred to providers who could follow up on their care.

REQUEST FOR PRODUCTION NO. 6: Produce all documents that discuss or relate in any way to Simpson's propensity for violence.

RESPONSE NO. 6: . Objection. The requested documents are prohibited from disclosure under HIPPA and accompanying regulation set forth in 45 C.F.R. 164 et. seq; I.C. §

RESPONSES TO PLAINTIFF'S FIRST SET OF DOCUMENT
REQUESTS TO DEFENDANT STATE OF IDAHO - 3

66-348; I.C. § 9-340A(2); I.C. § 9-340B(7); I.C. § 9-340C(13) and work product and attorney client privilege doctrines. Please see privilege log.

REQUEST FOR PRODUCTION NO. 7: Produce all documents that discuss or relate in any way to whether Simpson was a threat to others.

RESPONSE NO. 7: Objection. The requested documents are prohibited from disclosure under HIPPA and accompanying regulation set forth in 45 C.F.R. 164 et. seq; I.C. § 66-348; I.C. § 9-340A(2); I.C. § 9-340B(7); I.C. § 9-340C(13). Please see privilege log.

REQUEST FOR PRODUCTION NO. 8: Produce all documents relating to the victim rights that the State of Idaho provided to Mr. Mitchell in connection with the Bingham County Court action that the State of Idaho initiated in 2012.

RESPONSE NO. 8: Objection. This Request assumes that the state was under a legal requirement provide documentation to Mr. Mitchell. Without waiving the objection, the State is not aware of any such documents. Should such documentation be discovered this Response will be supplemented.

REQUEST FOR PRODUCTION NO. 9: Produce all documents relating to the State of Idaho's investigation of the shooting of Mr. Mitchell on September 27, 2010.

RESPONSE NO. 9: Please see the police reports and the Critical Incident Report prepared by Dr. Heath Sommer on September 28, 2010. These documents are attached hereto as Exhibit "C."

REQUEST FOR PRODUCTION NO. 10: Produce all documents relating to the release of Simpson from State of Idaho custody.

RESPONSE NO. 10: Objection. The requested documents are prohibited from
RESPONSES TO PLAINTIFF'S FIRST SET OF DOCUMENT
REQUESTS TO DEFENDANT STATE OF IDAHO - 4

disclosure under HIPPA and accompanying regulation set forth in 45 C.F.R. 164 et. seq; I.C. § 66-348; I.C. § 9-340A(2); I.C. § 9-340B(7); I.C. § 9-340C(13). However, without waiving the same, and to the extent they are responsive, please see documents contained in Exhibit "A."

REQUEST FOR PRODUCTION NO. 11: Produce all documents relating to the dismissal of the criminal charges against Simpson.

RESPONSE NO. 11: Please see documents contained in Exhibit "A."

REQUEST FOR PRODUCTION NO. 12: Produce all documents relating to Simpson's acquisition, possession or use of guns.

RESPONSE NO. 12: The State is not in possession of documents related to Simpson's acquisition or use of guns. The State did procure pictures of Simpson carrying what appears to be a gun. These pictures are attached as Exhibit "D."

REQUEST FOR PRODUCTION NO. 13: Produce all documents relating to any arrests of, or criminal charges brought against, Simpson prior to September 28, 2010. (The time limitation from Instruction No.7 does not apply to this request.)

RESPONSE NO. 13: Please see the attached printout of cases from the Idaho Repository attached as Exhibit "E."

REQUEST FOR PRODUCTION NO. 14: Produce all documents that the State of Idaho provided to Simpson or his attorney in response to subpoenas and discovery requests made in the Bannock County Court action against Simpson.

RESPONSE NO. 14: Objection. The requested documents are prohibited from disclosure under HIPPA and accompanying regulation set forth in 45 C.F.R. 164 et. seq; I.C. § 66-348; I.C. § 9-340A(2); I.C. § 9-340B(7); I.C. § 9-340C(13). Please see privilege log. The
RESPONSES TO PLAINTIFF'S FIRST SET OF DOCUMENT
REQUESTS TO DEFENDANT STATE OF IDAHO - 5

documents to which the above objection does not apply, and to the extent they are responsive, are attached hereto as Exhibit "F."

REQUEST FOR PRODUCTION NO. 15: Produce all documents relating to the State of Idaho's involvement in the Bannock County Court action against Simpson, including any documents that the State of Idaho showed to the Court.

RESPONSE NO. 15: Objection. The requested documents are prohibited from disclosure under HIPPA and accompanying regulation set forth in 45 C.F.R. 164 et. seq; I.C. § 66-348; I.C. § 9-340A(2); I.C. § 9-340B(7); I.C. § 9-340C(13). Please see privilege log. The State was not directly involved in the Bannock County Court action. Documents provided to the court included reports of Dr. Nels Sather, dated May 16, 2011 and March 29, 2012, and from Dr. Richard Baker, dated November 17, 2011, and July 10, 2012. Please see the privilege log.

REQUEST FOR PRODUCTION NO. 16: Produce all documents relating to any conservator and/or guardianship proceeding initiated on behalf of Simpson.

RESPONSE NO. 16: Objection. The requested documents are prohibited from disclosure under HIPPA and accompanying regulation set forth in 45 C.F.R. 164 et. seq; I.C. § 66-348; I.C. § 9-340A(2); I.C. § 9-340B(7); I.C. § 9-340C(13) and work product and attorney client privilege doctrines. Please see privilege. The documents that are not subject to the above objection, to the extent responsive, are attached as Exhibit "A."

REQUEST FOR PRODUCTION NO. 17: Produce documents relating to any State policy, guidelines or instructions relating to the initiation of guardian and/or conservatorship proceedings on behalf of individuals facing criminal charges.

RESPONSES TO PLAINTIFF'S FIRST SET OF DOCUMENT
REQUESTS TO DEFENDANT STATE OF IDAHO - 6

RESPONSE NO. 17: The State has no such policy. As such, there are no documents to be produced in this regard.

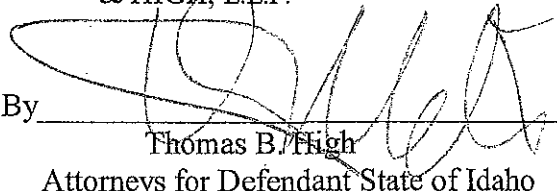
REQUEST FOR PRODUCTION NO. 18: Produce documents relating to any State policy, guidelines, or instructions relating to any conflict or potential conflict between the rights of a victim and the State's interest in keeping secret the medical records of the person charged with the crime.

RESPONSE NO. 18: Objection. This Request inaccurately implies that the state has a policy of "keeping secrets." The state complies with all state and federal law regarding the confidentiality of medical records. Beyond these laws no such policy exists.

DATED this 2nd day of April, 2013.

BENOIT, ALEXANDER, HARWOOD
& HIGH, L.L.P.

By


Thomas B. High

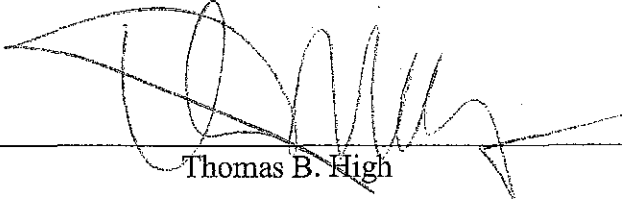
Attorneys for Defendant State of Idaho

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 2nd day of April, 2013, he caused a true and correct copy of the **RESPONSES TO PLAINTIFF'S FIRST SET OF DOCUMENT REQUESTS TO DEFENDANT STATE OF IDAHO** to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743
(Attorneys for Plaintiff)

Hand Delivered ☐
U.S. Mail ☒
Fax ☐
Fed. Express ☐



Thomas B. High

RESPONSES TO PLAINTIFF'S FIRST SET OF DOCUMENT
REQUESTS TO DEFENDANT STATE OF IDAHO - 8

Thomas B. High, ISB No. 2430
Bren E. Mollerup, ISB No. 7959
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Attorneys for Defendant State of Idaho
(16105\Discovery\Res to Plain 1st Set of Requests for Admission\TBH\ka)

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

* * * * *

RYAN M. MITCHELL,

Plaintiff,

y.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity,
and BANNOCK COUNTY, IDAHO, a
political subdivision, SUSAN SIMPSON, as
Conservator and Guardian of Gerald Durk
Simpson, and DOES 1-25,

Defendants.

Case No. CV-12-4124-OC

**RESPONSES TO PLAINTIFF'S
FIRST SET OF REQUESTS FOR
ADMISSION PURSUANT TO
I.R.C.P. 36 TO DEFENDANT STATE
OF IDAHO**

* * * * *

COMES NOW the Defendant, STATE OF IDAHO (hereinafter "State") and responds to Plaintiff's First Set of Requests for Admission Pursuant to I.R.C.P. 36 to Defendant State of Idaho as follows:

RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION
PURSUANT TO I.R.C.P. 36 TO DEFENDANT STATE OF IDAHO - 1



MAUK & BURGOWNE
FEB 25 2013
RECEIVED

REQUEST FOR ADMISSION NO. 1: Simpson has been released from the State's custody.

RESPONSE NO. 1: Simpson was last in the legal custody of the Idaho Department of Health and Welfare by virtue of an order of commitment entered on April 17, 2012. Pursuant to Idaho Code § 18-212(2), the commitment was for 90 days. Simpson's commitment expired on July 16, 2012. Pursuant to operation of law, the State admits Request No. 1.

REQUEST FOR ADMISSION NO. 2: The criminal charges against Simpson have been dismissed.

RESPONSE NO. 2: Admit, although the State would note that the dismissal by the Court was without prejudice.

REQUEST FOR ADMISSION NO. 3: The State of Idaho helped Simpson obtain dismissal of the criminal charges.

RESPONSE NO. 3: Denied.

REQUEST FOR ADMISSION NO. 4: The State of Idaho helped Simpson obtain his release from State Hospital South.

RESPONSE NO. 4: Denied. Simpson's commitment expired and he was "released" by operation of law.

REQUEST FOR ADMISSION NO. 5: The State of Idaho helped Simpson obtain his release from custody.

RESPONSE NO. 5: Denied. Simpson's commitment expired and he was "released" by operation of law.

RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION
PURSUANT TO I.R.C.P. 36 TO DEFENDANT STATE OF IDAHO - 2

REQUEST FOR ADMISSION NO. 6: Employees from the Idaho Assertive

Community Treatment program knew that Simpson owned guns prior to September 27, 2010.

RESPONSE NO. 6: Denied.

REQUEST FOR ADMISSION NO. 7: The Idaho State Department of Health and

Welfare knew Simpson owned guns prior to September 27, 2010.

RESPONSE NO. 7: Denied.

REQUEST FOR ADMISSION NO. 8: Simpson was cut from an Idaho State

Department of Health and Welfare program on or around July 1, 2010.

RESPONSE NO. 8: Denied.

REQUEST FOR ADMISSION NO. 9: Simpson was cut from the Idaho Assertive

Community Treatment program on or around July 1, 2010.

RESPONSE NO. 9: Denied.

REQUEST FOR ADMISSION NO. 10: The State of Idaho did not place Simpson in

a new treatment program on or after July 1, 2010.

RESPONSE NO. 10: The State objects to Request No. 10 in that it assumes an

incorrect fact that the State "places" participants in treatment programs and, therefore, denies the Request.

REQUEST FOR ADMISSION NO. 11: The State of Idaho did not check to see if

Simpson was taking his medication on or after July 1, 2010.

RESPONSE NO. 11: The State objects to this Request on the grounds and for the

reasons that a response would violate certain rights afforded Simpson by virtue of State and

Federal law and would violate the Health Insurance Portability and Accountability Act (HIPAA)

RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION

PURSUANT TO I.R.C.P. 36 TO DEFENDANT STATE OF IDAHO - 3

which precludes, in part, the transfer, sharing or communication of health information regarding any patient. The State, therefore, denies the Request.

REQUEST FOR ADMISSION NO. 12: After July 1, 2010, and prior to September 27, 2010, Simpson was not placed into a new treatment program.

RESPONSE NO. 12: The State objects to Request No. 12 in that it assumes an incorrect fact that the State has the legal authority to “place” any particular person in a “program” and therefore, the State denies the Request.

REQUEST FOR ADMISSION NO. 13: Simpson has been under the care of the Idaho State Department of Health and Welfare for most of his adult life.

RESPONSE NO. 13: The State incorporates its prior Response given to Request No. 11 by this reference, and, therefore, denies this Request.

REQUEST FOR ADMISSION NO. 14: Simpson is not able to manage his medications without help.

RESPONSE NO. 14: The State incorporates its prior Response given to Request No. 11 by this reference, and, therefore, denies this Request.

REQUEST FOR ADMISSION NO. 15: Simpson has a longstanding medical disease and disorder.

RESPONSE NO. 15: The State incorporates its prior Response given to Request No. 11 by this reference, and, therefore, denies this Request.

REQUEST FOR ADMISSION NO. 16: Simpson's primary diagnosis is Paranoid Schizophrenic Psychotic Disorder.

RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION
PURSUANT TO I.R.C.P. 36 TO DEFENDANT STATE OF IDAHO - 4

RESPONSE NO. 16: The State incorporates its prior Response given to Request No. 11 by this reference, and, therefore, denies this Request.

REQUEST FOR ADMISSION NO. 17: On September 27, 2010, Simpson shot Mr. Mitchell.

RESPONSE NO. 17: The State has no personal knowledge and, therefore, denies this Request.

REQUEST FOR ADMISSION NO. 18: On September 27, 2010, Simpson fired his gun in the direction of the Mocha Madness coffee shop in Pocatello, Idaho.

RESPONSE NO. 18: The State has no personal knowledge and, therefore, denies this Request.

REQUEST FOR ADMISSION NO. 19: As of September 27-28, 2010, Simpson had three guns in his apartment.

RESPONSE NO. 19: The State has no personal knowledge and, therefore, denies this Request.

REQUEST FOR ADMISSION NO. 20: As of September 27-28, 2010, Simpson had ammunition and gun powder in his apartment.

RESPONSE NO. 20: The State has no personal knowledge and, therefore, denies this Request.

REQUEST FOR ADMISSION NO. 21: On September 28, 2010, the Pocatello police found three guns in Simpson's apartment.

RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION
PURSUANT TO I.R.C.P. 36 TO DEFENDANT STATE OF IDAHO - 5

RESPONSE NO. 21: The State has no personal knowledge and, therefore, denies this Request.

REQUEST FOR ADMISSION NO. 22: After shooting Mr. Mitchell, Simpson cleaned and oiled his gun.

RESPONSE NO. 22: The State has no personal knowledge and, therefore, denies this Request.

REQUEST FOR ADMISSION NO. 23: After shooting Mr. Mitchell, Simpson hid the spent cartridges.

RESPONSE NO. 23: The State has no personal knowledge and, therefore, denies this Request.

REQUEST FOR ADMISSION NO. 24: After shooting Mr. Mitchell, Simpson, reloaded his gun.

RESPONSE NO. 24: The State has no personal knowledge and, therefore, denies this Request.

REQUEST FOR ADMISSION NO. 25: The State of Idaho did not notify Mr. Mitchell of the Bingham County Court action that it had initiated.

RESPONSE NO. 25: Admit. Notice was provided in accordance with Idaho Code §§ 15-5-309 and 15-5-405.

REQUEST FOR ADMISSION NO. 26: The State of Idaho did not notify Mr. Mitchell that the Bingham County Court action could lead to the release of Simpson.

RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION
PURSUANT TO I.R.C.P. 36 TO DEFENDANT STATE OF IDAHO - 6

RESPONSE NO. 26: The State objects to Request No. 26 in that it assumes an incorrect fact that the Bingham County Court Action was somehow relevant to the expiration of the Court's commitment order and, therefore, the State denies the Request.

REQUEST FOR ADMISSION NO. 27: The State of Idaho did not notify Mr. Mitchell that he had a right to be present at the proceedings in the Bingham County Court action.

RESPONSE NO. 27: The State objects to Request No. 27 in that it assumes an incorrect fact that Mr. Mitchell had a "right" to be present at the Bingham County Court proceeding, and, therefore, the State denies the Request.

REQUEST FOR ADMISSION NO. 28: The State of Idaho did not notify Mr. Mitchell that it was working with Ms. Simpson to secure the release of her brother.

RESPONSE NO. 28: The State objects to Request No. 28 in that it assumes an incorrect fact that the State was working with Mr. Simpson to secure the "release" of her brother, and, therefore, denies the Request.

REQUEST FOR ADMISSION NO. 29: The State of Idaho did not notify Mr. Mitchell that it was working with Ms. Simpson to obtain the dismissal of the criminal charges against her brother.

RESPONSE NO. 29: The State objects to Request No. 29 in that it assumes an incorrect fact that the State was working to obtain the dismissal of criminal charges against Mr. Simpson and, therefore, denies the Request.

REQUEST FOR ADMISSION NO. 30: The State of Idaho did not notify Mr. Mitchell that it was working with the Bannock County Prosecuting Attorney's Office to secure the release of Simpson.

RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION
PURSUANT TO I.R.C.P. 36 TO DEFENDANT STATE OF IDAHO - 7

RESPONSE NO. 30: The State objects to Request No. 30 in that it assumes an incorrect fact that the State and Bannock County were working together to “release” Mr. Simpson and, therefore, denies the Request.

REQUEST FOR ADMISSION NO. 31: The State of Idaho did not notify Mr. Mitchell that it was working with the Bannock County Prosecuting Attorney's Office to obtain the dismissal of the criminal charges against Simpson.

RESPONSE NO. 31: The State objects to Request No. 31 in that it assumes an incorrect fact that the State and Bannock County were working together to dismiss criminal charges against Mr. Simpson, and the State, therefore, denies the Request.

REQUEST FOR ADMISSION NO. 32: The State of Idaho did not notify Mr. Mitchell that it had appeared in the Bannock County Court action.

RESPONSE NO. 32: The State did not appear in the Bannock County Court action, an incorrect assumption of fact by Plaintiff, and, therefore, denies the Request.

REQUEST FOR ADMISSION NO. 33: The State of Idaho did not notify Mr. Mitchell that it had appeared in the Bannock County Court Action in an effort to obtain the release of Simpson.

RESPONSE 33: See Response No. 30 and Response No. 32. The State again objects and denies Request No. 33.

REQUEST FOR ADMISSION NO. 34: The State of Idaho did not notify Mr. Mitchell that it had appeared in the Bannock County Court action in an effort to have the criminal charges against Simpson dismissed.

RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION
PURSUANT TO I.R.C.P. 36 TO DEFENDANT STATE OF IDAHO - 8

RESPONSE NO. 34: See Response No. 31 and Response No. 32. The State again objects and denies Request No. 34.

REQUEST FOR ADMISSION NO. 35: The State of Idaho did not obtain an order in the Bingham County Court action that would prevent Simpson from obtaining guns and/or ammunition.

RESPONSE NO. 35: The State objects to Request No. 35 in that it assumes an incorrect fact that there is a statutory basis to obtain an order in a guardianship proceeding regarding guns and/or ammunition, but, in light of the objection, admits the Request.

REQUEST FOR ADMISSION NO. 36: The State of Idaho did not notify Mr. Mitchell that it would not obtain an order in the Bingham County Court action that would prevent Simpson from obtaining guns and/or ammunition.

RESPONSE NO. 36: See Response No. 35. In light of the objection, the State admits the Request.

REQUEST FOR ADMISSION NO. 37: The State of Idaho had knowledge that Simpson had a propensity to violence prior to July 1, 2010.

RESPONSE NO. 37: Denied.

REQUEST FOR ADMISSION NO. 38: The State of Idaho had knowledge that Simpson could be a threat to others prior to July 1, 2010.

RESPONSE NO. 38: Denied.

REQUEST FOR ADMISSION NO. 39: The State of Idaho had knowledge that Simpson had a gun (or guns) in his apartment prior to July 1, 2010.

RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION
PURSUANT TO I.R.C.P. 36 TO DEFENDANT STATE OF IDAHO - 9

RESPONSE NO. 39: The State has no personal knowledge and, therefore, denies this Request.

REQUEST FOR ADMISSION NO. 40: After attempting to murder Mr. Mitchell, Simpson's interests were more important to the State of Idaho than the rights of Mr. Mitchell as the victim of a violent crime.

RESPONSE NO. 40: The State objects to Request No. 40 as a gross mischaracterization of facts and, therefore, denies the Request.

REQUEST FOR ADMISSION NO. 41: The State of Idaho never notified Mr. Mitchell that Simpson's interests were more important to the State of Idaho than the rights of Mr. Mitchell as the victim of a violent crime.

RESPONSE NO. 41: See Response No. 40. The State, therefore, denies the Request.

REQUEST FOR ADMISSION NO. 42: After Simpson shot Mr. Mitchell, the State of Idaho told the Pocatello Police that without an order from a judge they would not discuss Simpson's medical condition.

RESPONSE NO. 42: See Response No. 11. The State cannot reveal medical information absent consent or compliance with HIPAA and thus, the State admits it informed the Pocatello Police that an order would be necessary.

REQUEST FOR ADMISSION NO. 43: The day after Simpson shot Mr. Mitchell, the State of Idaho prepared a report about the shooting attempting to justify Simpson's possession of guns.

RESPONSE NO. 43: Denied. Further, the State objects to the Request as containing multiple fact assertions and fails to comply with IRCP Rule 36.

RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION
PURSUANT TO I.R.C.P. 36 TO DEFENDANT STATE OF IDAHO - 10

REQUEST FOR ADMISSION NO. 44: The day after Simpson shot Mr. Mitchell, the State of Idaho prepared a report about the shooting stating that "xxxx carrying of a firearm in public is not inconsistent with the nature of rural townships..."

RESPONSE NO. 44: Denied. Further, the State objects to the Request as containing multiple fact assertions and fails to comply with IRCP Rule 36.

REQUEST FOR ADMISSION NO. 45: In the State of Idaho report stating that "xxxx carrying of a firearm in public is not inconsistent with the nature of rural townships," the "xxxx" refers to Simpson and fails to comply with IRCP Rule 36.

RESPONSE NO. 45: Denied. Further, the State objects to the Request as containing multiple fact assertions.

REQUEST FOR ADMISSION NO. 46: The Bingham County Court action was not the first time the State of Idaho filed a conservator and/or guardianship action on behalf of an individual facing criminal charges.

RESPONSE NO. 46: Denied.

REQUEST FOR ADMISSION NO. 47: The State of Idaho did not notify Mr. Mitchell that it was helping Simpson obtain his release.

RESPONSE NO. 47: The State objects to Request No. 47 in that it assumes an incorrect fact that the State was helping Simpson "obtain his release" and, therefore, objects to the Request.

REQUEST FOR ADMISSION NO. 48: The State of Idaho did not notify Mr. Mitchell that it was helping Simpson obtain dismissal of the criminal charges.

RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION
PURSUANT TO I.R.C.P. 36 TO DEFENDANT STATE OF IDAHO - 11

RESPONSE NO. 48: The State objects to Request No. 48 in that it assumes an incorrect fact that the State was helping Simpson to obtain dismissal of criminal charges and, therefore, denies the Request.

REQUEST FOR ADMISSION NO. 49: The State of Idaho did not notify Mr. Mitchell that he had a right to be present at the Bingham County Court action.

RESPONSE NO. 49: The State objects to Request No. 49 in that it assumes, incorrectly, that Mr. Mitchell has a right to be present at the Bingham County Court action, and, therefore, denies the Request.

REQUEST FOR ADMISSION NO. 50: The State of Idaho did not notify Mr. Mitchell that he had a right to be heard at the Bingham County Court action.

RESPONSE NO. 50: The State objects to Request No. 50 in that it assumes, incorrectly, that Mr. Mitchell has a right to be heard in the Bingham County Court matter, and, therefore, denies the Request.

DATED this 22nd day of February, 2013.

BENOIT, ALEXANDER, HARWOOD
& HIGH, L.L.P.

By


Thomas B. High

Attorneys for Defendant State of Idaho

RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION
PURSUANT TO I.R.C.P. 36 TO DEFENDANT STATE OF IDAHO - 12

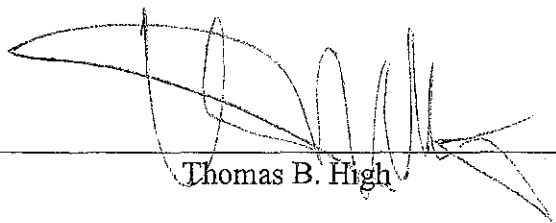
CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 22nd day of February, 2013, he caused a true and correct copy of the **RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION PURSUANT TO I.R.C.P. 36 TO DEFENDANT STATE OF IDAHO** to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743
(Attorneys for Plaintiff)

Hand Delivered
U.S. Mail
Fax
Fed. Express

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Thomas B. High

RESPONSES TO PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSION
PURSUANT TO I.R.C.P. 36 TO DEFENDANT STATE OF IDAHO - 13

MAUK & BURGOYNE

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515 South 6th Street
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Boise, Idaho 83701-1743

July 23, 2013

VIA EMAIL & REGULAR MAIL

Thomas B. High
Bren E. Mollerup
Benoit, Alexander, Harwood & High, LLP
126 Second Avenue North
P.O. Box 366
Twin Falls, ID 83303-0366

Re: Meet and Confer – IRCP 37

Dear Messrs. High & Mollerup:

I am sending this letter to address our concerns relating to the State of Idaho's inappropriate and inadequate responses, and/or failure to respond to Plaintiff's Interrogatories and Document Requests. I would request that we set a time during the week of July 29, 2013 to meet and confer over these particular issues and see if we can reach some agreement. If we cannot, it is my intent to file a motion to compel.

Document Requests

The vast majority of the document requests asked for a straightforward production of material relevant to the issues raised by this lawsuit:

Request No. 1: Produce all documents relating to the care and treatment that the State of Idaho has provided to Simpson.

Request No. 2: Produce all documents relating to communications that discuss the release (or potential release) of Simpson.

Request No. 3: Produce all documents relating to communications that discuss the dismissal (or potential dismissal) of criminal charges against Simpson.



Request No. 4: Produce all documents relating to the State of Idaho's decision to stop providing help or services to Simpson on or around July 1, 2010.

Request No. 5: Produce all documents relating to any effort the State of Idaho made to place Simpson in a new program during the summer of 2010.

Request No. 6: Produce all documents that discuss or relate in any way to Simpson's propensity for violence.

Request No. 7: Produce all documents that discuss or relate in any way to whether Simpson was a threat to others.

Request No. 10: Produce all documents relating to the release of Simpson from State of Idaho custody.

Request No. 15: Produce all documents relating to the State of Idaho's involvement in the Bannock County Court action against Simpson, including any documents that the State of Idaho showed to the Court.

Request No. 16: Produce all documents relating to any conservator and/or guardianship proceeding initiated on behalf of Simpson.

Unfortunately, all of these simple questions were met with the same basic boilerplate objection: "The requested documents are prohibited from disclosure under HIPPA and accompanying regulations set forth in 45 C.F.R. 164 et. seq; I.C. § 66-348; I.C. § 9-340A(2); I.C. § 9-340B(7); I.C. § 9-340C(13)."

Given the fact that my client was almost killed after the State terminated its supervision and services for Simpson, I think that he has an interest and a right to see the materials that the State has refused to produce. I think that there is a simple solution that would eliminate this roadblock to discovery of information relevant to this lawsuit.

I would propose that we enter into an agreement by which we agree to respect any claim of confidentiality or privacy asserted by the State, and agree that we will not use any material so designated until we first seek permission from the Court. That would place the burden on us, but, at the same time, give the victim (i.e. Mr. Mitchell and his counsel) the opportunity to review the information that is contained in the State's records. Please let me know if this is agreeable to the State so that we can move discovery forward.

On another issue, in connection with the photographs taken of Simpson walking down the streets of Pocatello with his gun, I was surprised that the State did not produce any emails relating to this incident. Given the fact that the photographs were "posted" at the State office, I would have expected to see at least some on-line discussion by State employees. I would think that a simple search of the Health and Welfare server using "Simpson," "gun" or "rifle," and/or "photo" or "photograph" should turn up relevant communications.

Interrogatories

Interrogatory No. 1: This question asked the State to "describe everything that was considered" in connection with the State's decision to terminate its services and support of Simpson. The State did not answer that part of the question. Given the fact that the State has based its summary judgment motion on the allegation that the State's decision "was based, in large measure, on decreases in funding..." it must answer the question and "describe everything that was considered."

Interrogatory No. 2: This question asked the State to "identity each person who participated in communicating [the termination decision] to Simpson." The State did not provide an answer to this part of the question.

Interrogatory No. 6: The State had no problem providing the Idaho District Court in Bingham County with a description of Simpson's medical diagnosis as well as describing some of his medications. Those documents were publicly filed with the Court when the State was representing Simpson. That same information should be made available to Simpson's victim.

Interrogatory No. 7: The State did not answer the question. Identify the other people who knew that Simpson possessed a gun. The cryptic statement that "other Adult Mental Health staff" could have seen the pictures of Simpson with his guns, does not answer the question.

Interrogatory No. 16: This question asks the State to describe its communications with the District Court for Bannock County relating to the dismissal of Simpson's criminal charges or his release from custody. The Courts of this State are open to the public. Whatever communications occurred cannot be hidden behind a barrage of objections.

Interrogatory No. 17. The State was asked to identify each court proceeding it "has filed to obtain the appointment of [a] conservator and/or guardianship for anyone who is facing criminal charges." Again, the State cannot hide behind third party confidentiality concerns. The State should identify the 32 instances where this has occurred, given the fact that the criminal proceedings should all have been a matter of public record. In addition, the State should not limit its response to State Hospital South and Region Six.

Privilege Log

I think that the State has been overzealous in its attempt to hide material behind a cloak of privilege. During the meet and confer, there are several issues relating to the State's privilege log that I would like to discuss, including:

1. The State provided information and reports to Judge Carnaroli who was presiding over the criminal case against Simpson - - *State of Idaho v. Gerald Durk Simpson*, Idaho State District Court for Bannock County, Case No. CR-2010-0015926-FE. Mr. Mitchell, the victim of Simpson's violent crime, should be entitled to obtain copies of any materials that the State provided to the Court in the criminal case that was supposed to have been brought to protect the public as well as vindicate Mr. Mitchell's rights as a crime victim.

2. There are several documents that the State filed with the District Court for Bingham County that are part of the record (e.g., the State's Petition, Dr. Murdock's letter, the Visitor's Report, etc.) and available to the public - - *In re Gerald Durk Simpson*, Idaho State District Court for Bingham County, Case No. CV-2012-0000862. Nevertheless, the State has withheld these very same documents from production in this lawsuit.

3. As part of the Privilege Log, the State was supposed to have identified all of the recipient(s) of each document withheld on privilege grounds. Unfortunately, rather than identifying the recipient(s), the State has instead lumped the author and recipient categories together and then used intentionally vague terms such as "N/A," "Various," and "Attorney General's Staff."

4. The State has grouped hundreds, and in some cases thousands, of documents together into a single entry on its Privilege Log and simply described them as "State Hospital South Records." That hardly complies with the instructions:

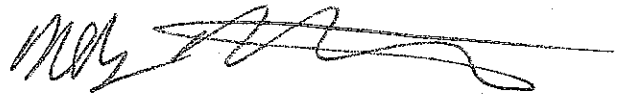
In accordance with Rule 26 of the Idaho Rules of Civil Procedure, if any objection is made to any request herein based on the attorney-client privilege, the work product rule, or any other privilege, and such privilege is asserted to avoid disclosing the requested information or materials, you must describe the information or materials withheld and the privilege relied on in sufficient detail to enable Plaintiff and his counsel to assess the applicability of the privilege. Such details shall include: (a) A description of the allegedly privileged communication withheld; (b) A list of the recipient(s) of the information or materials withheld; (c) The date of the allegedly privileged communication withheld; (d) The subject of the allegedly privileged communication withheld; (e) The type of privileged communication withheld (e.g., email, letter, memorandum or

computer database); and (f) The nature of the privilege(s) claimed. The detail provided must be sufficient for Plaintiff to appropriately identify the information as would be required for Plaintiff to test the claim of privilege on a motion to compel.

Please let me know when you will be able to have the meet and confer during the week of July 29, 2013.

Sincerely,

MAUK & BURGOYNE

A handwritten signature in black ink, appearing to read 'BNM', followed by a long, horizontal, wavy line that extends across the page.

Briane Nelson Mitchell

BNM/ska

WILLIAM L. MAUK (ISB #1825)
BRIANE NELSON MITCHELL (ISB #2346)
MAUK & BURGOYNE
515 South 6th Street
Post Office Box 1743
Boise, Idaho 83701-1743
Telephone: (208) 345-2654
Facsimile (208) 345-3319
nels@maukburgoyne.com

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RYAN M. MITCHELL,

Plaintiff,

vs.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity, and
BANNOCK COUNTY, IDAHO, a political
subdivision, SUSAN SIMPSON, as
Conservator and Guardian of Gerald Durk
Simpson, and DOES 1-25,

Defendants.

Case No. CV 12-4124 OC

NOTICE OF RULE 30(b)(6)
DEPOSITION

Date: August 13, 2013
Time: 9:00 a.m.

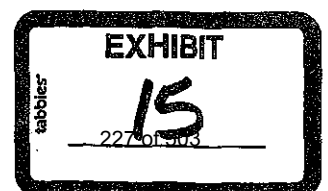
TO: Defendant State of Idaho and its Attorneys of Record.

YOU ARE HEREBY NOTIFIED pursuant to Rule 30(b)(6) of the Idaho Rules of Civil Procedure that on August 13, 2013, at 9:00 a.m. and continuing thereafter until completed, at the AmeriTel Inn, 1440 Bench Road, Pocatello, ID 83201, Plaintiff acting through counsel will take the deposition of the person or persons designated by the State of Idaho.

Definitions

1. "Mr. Mitchell" refers to Plaintiff Ryan Mitchell.

NOTICE OF RULE 30(b)(6) DEPOSITION - 1



2. "Simpson" refers to Defendant Gerald Durk Simpson, and anyone acting on his behalf including attorneys, agents, conservators and guardians.

3. "Bannock County" refers to Defendant Bannock County, its officers, directors, employees, agents, attorneys, consultants and any other person or entity purporting to act on its behalf, including the Bannock County Prosecuting Attorney's Office.

4. "Idaho Department of Health and Welfare" refers to the Department's officers, directors, employees, agents, attorneys, consultants and any other person or entity purporting to act on its behalf.

5. "Idaho Attorney General's Office" refers to the Idaho State Attorney General and all employees of that office, as well as all agents, attorneys, consultants and anyone else purporting to act for or on behalf of the Idaho State Attorney General.

6. "State" or "State of Idaho" refers to the Defendant State of Idaho and all of its officers, employees, departments, agents, consultants and anyone else purporting to act for or on behalf of the State including but not limited to the Department of Health and Welfare and the Idaho Attorney General's Office.

7. "Relate(s) to," "related to" or "relating to" means, in addition to its customary and usual meaning: of or concerning, pertaining to, consisting of, bearing upon, containing, describing, evidencing, constituting, reflecting, or having any logical or factual connection with the subject matter dealt with or alluded to in the request.

8. "Communicate," "communication" and "communications" mean any email, contact, oral or written, formal or informal, at any time or place and under any circumstances, whereby information of any nature was recorded, transmitted, or transferred, including any meeting, conference, face-to-face conversation, telephone conversation, or conference or

communication used by any media, as well as any written, taped, recorded, or electronic communication of any kind whatsoever.

9. The term “document” and its plural shall refer to anything that would be a “writing” or “recording,” as defined in Rule 1001(1) of the Idaho Rules of Evidence, or a “document,” as defined in Rule 34(a) of the Idaho Rules of Civil Procedure, and refers to all handwritten, typed, printed, electronic, or otherwise visually or aurally reproduced materials, emails, and all originals and copies that contain any notes, handwriting, underscoring, deletions, or that in any way otherwise differ from the original thereof. Such documents include but are not limited to: (1) all the written, printed, recorded, graphic, or sound reproductions, however produced, including but not limited to correspondence, memoranda, notes, telegrams, notebooks, diaries, desk calendars, charts, photographs, screen shots, and records of any kind; (2) all electronically stored information (“ESI”), computer-readable data compilations, including but not limited to tapes, diskettes, card, cassettes, electronic mail, and all other electronic or mechanical devices which contain information stored in mainframe and personal computers or devices (such as PDAs/cell phones), offsite storage or accessible “online”; (3) all originals, drafts, and copies that differ in any respect from the original; all marginal comments that appear on such documents; and all transcripts or recordings of such documents; and all attachments, enclosures, or documents affixed or referred to in such documents.

10. “Describe” means a detailed description of all facts, actions or inactions, including the relevant dates and the identity of any documents used in responding to the question.

11. “Identify” a person means providing the name, position, address, telephone number and email address for the person. “Identify” a location means providing the name and

address for the location. "Identify" a court proceeding means providing the case name, case number, court where the action was filed, and the date that the action was filed.

Matters for Examination

Pursuant to Rule 30(b)(6) of the Idaho Rules of Civil Procedure, Defendant State of Idaho is requested to designate one or more of its officers, employees or other persons to provide testimony on the State's behalf on the following matters:

1. The release (or potential release) of Simpson and all communications relating to that topic.
2. The dismissal (or potential dismissal) of criminal charges against Simpson and all communications relating to that topic.
3. The State of Idaho's decision to stop providing help or services to Simpson during the Summer of 2010.
4. Any effort the State of Idaho made to place Simpson in a new program during the Summer of 2010.
5. Simpson's propensity for violence and any discussions or communications relating to that topic.
6. Any discussions or communications relating to Simpson's possession or use of guns.
7. Any discussions or communications relating to the photograph of Simpson walking with a gun.
8. Any discussions or communications relating in any way to whether Simpson was a threat to others.
9. The State of Idaho's statements that:

1. We do not have enough clinical or technical support staff to meet the current demand we are experiencing
2. Because of our client-to-staff ratio we are providing less than the standard of treatment to nearly all individuals in our Programs
3. We are not complying with mandatory paperwork and billing guidelines
4. We are not complying with mandatory legal guidelines
5. We are not in compliance with our own Departmental guidelines

And that State employees should consider that:

This is not a decision that this was caused by budget cuts alone.

10. All services and assistance provided to Simpson through the Idaho Assertive Community Treatment Program.
11. The State of Idaho's obligation to respect the victim rights of Mr. Mitchell.
12. The State of Idaho's investigation of the shooting of Mr. Mitchell on September 27, 2010.
13. Simpson's acquisition, possession or use of guns.
14. The State of Idaho's response to subpoenas and discovery requests made in the Bannock County Court action against Simpson.
15. The conservator and/or guardianship proceeding initiated on behalf of Simpson.
16. Any State policy, guidelines or instructions relating to the initiation of guardian and/or conservatorship proceedings on behalf of individuals facing criminal charges.
17. The 32 conservatorship/guardianship proceedings the State has initiated for patients at State Hospital South or clients of Adult Mental Health in Region Six.
18. The reasons the State stopped providing services or support to Simpson in the Summer of 2010.

19. The support and services that the State provided to Simpson prior to the Summer of 2010.

20. The care and treatment that the State of Idaho has provided to Simpson.

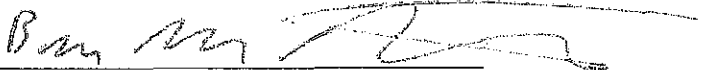
21. The termination of Dr. Heath Sommer's employment and his relationship with the State.

22. The fifty-nine separate times that State employees reviewed or changed Simpson's State records (as well as the reason for reviewing or changing) during the four days after Simpson shot Mr. Mitchell.

This deposition will be taken pursuant to the Idaho Rules of Civil Procedure.

Dated this 25th day of July, 2013.

MAUK & BURGOYNE

By 
Briane Nelson Mitchell, of the Firm,
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of July, 2013, I caused a true and correct copy of the above and foregoing instrument to be served upon the following individuals in the manner indicated below:

Susan Simpson
765 Channing Ave.
Palo Alto, CA 94301

☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

*As Conservator and Guardian of
Gerald Durk Simpson*

Thomas B. High
Bren E. Mollerup
Benoit, Alexander, Harwood & High, LLP
126 Second Avenue North
P.O. Box 366
Twin Falls, ID 83303-0366

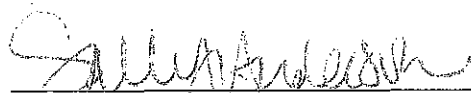
☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

Attorneys for Defendant State of Idaho

Ian N. Service
Bannock County Prosecutor's Office
624 E Center
P.O. Box P
Pocatello, ID 83201

☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

Attorneys for Defendant Bannock County



Sally Anderson,
Assistant to Briane Nelson Mitchell

WILLIAM L. MAUK (ISB #1825)
BRIANE NELSON MITCHELL (ISB #2346)
MAUK & BURGOYNE
515 South 6th Street
Post Office Box 1743
Boise, Idaho 83701-1743
Telephone: (208) 345-2654
Facsimile (208) 345-3319
nels@maukburgoyne.com

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RYAN M. MITCHELL,

Plaintiff,

vs.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity, and
BANNOCK COUNTY, IDAHO, a political
subdivision, SUSAN SIMPSON, as
Conservator and Guardian of Gerald Durk
Simpson, and DOES 1-25,

Defendants.

Case No. CV 12-4124 OC

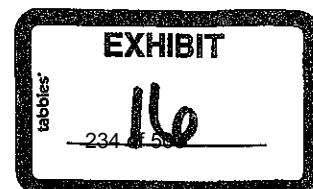
NOTICE OF DEPOSITION OF
DR. HEATH SOMMER

Date: August 14, 2013
Time: 9:00 a.m.

TO: Defendants above-named and their counsel of record.

PLEASE TAKE NOTICE that the Plaintiff will take the testimony on oral examination of
Dr. Heath Sommer, before a Notary Public or before some other officer authorized by law to
administer oaths, on the 14th day of August, 2013, at 9:00 o'clock, a.m., and thereafter from day to
day as the taking of the deposition may be adjourned, at the Ameritel Inn, 1440 Bench Road,
Pocatello, ID 83201, at which time and place you are notified to appear and take such part in the
examination as may be deemed proper.

NOTICE OF DEPOSITION OF DR. HEATH SOMMER - 1



This deposition will be taken pursuant to the Idaho Rules of Civil Procedure.

Dated this 4th day of July, 2013.

MAUK & BURGOYNE

By Brian Nelson Mitchell
Briane Nelson Mitchell, of the Firm,
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of July, 2013, I caused a true and correct copy of the above and foregoing instrument to be served upon the following individuals in the manner indicated below:

Susan Simpson
765 Channing Ave.
Palo Alto, CA 94301

☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

*As Conservator and Guardian of
Gerald Durk Simpson*

Thomas B. High
Bren E. Mollerup
Benoit, Alexander, Harwood & High, LLP
126 Second Avenue North
P.O. Box 366
Twin Falls, ID 83303-0366

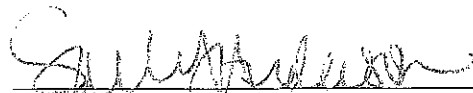
☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

Attorneys for Defendant State of Idaho

Ian N. Service
Bannock County Prosecutor's Office
624 E Center
P.O. Box P
Pocatello, ID 83201

☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

Attorneys for Defendant Bannock County



Sally Anderson,

Assistant to Briane Nelson Mitchell

WILLIAM L. MAUK (ISB #1825)
BRIANE NELSON MITCHELL (ISB #2346)
MAUK & BURGOYNE
515 South 6th Street
Post Office Box 1743
Boise, Idaho 83701-1743
Telephone: (208) 345-2654
Facsimile (208) 345-3319
nels@maukburgoyne.com

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

RYAN M. MITCHELL,

Plaintiff,

vs.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity, and
BANNOCK COUNTY, IDAHO, a political
subdivision, SUSAN SIMPSON, as
Conservator and Guardian of Gerald Durk
Simpson, and DOES 1-25,

Defendants.

Case No. CV 12-4124 OC

**I.R.C.P. 45 SUBPOENA
FOR DEPOSITION OF
DR. HEATH SOMMER**

The State of Idaho to: Dr. Heath Sommer
Season of Hope
4650 Hawthorne Road, Ste. 3B
Chubbuck, ID 83202

YOU ARE COMMANDED:

☐ to appear at the place, date and time specified below to testify in the above case.

☒ to appear at the place, date and time specified below to testify at the taking of a deposition in the above case.

I.R.C.P. 45 SUBPOENA FOR DEPOSITION OF DR. HEATH SOMMER - 1

[X] to produce or permit inspection and copying of the following documents or objects, including electronically stored information, at the place, date and time specified below.

Documents

Any documents, electronically stored information or other material relating to the care, treatment or termination of services to Gerald Durk Simpson.

Any documents, electronically stored information or other material relating to the shooting of Ryan Mitchell.

Any documents, electronically stored information or other material relating to the termination of your employment with the State of Idaho.

[✓] to permit inspection of the following premise at the date and time specified below.

PLACE DATE AND TIME: August 14, 2013

9:00 a.m.

Place: AmeriTel Inn

1440 Bench Rd.

Pocatello, ID 83201

You are further notified that if you fail to appear at the place and time specified above that you may be held in contempt of court and that the aggrieved party may recover from you the sum of \$100 and all damages which the party may sustain by your failure to comply with this subpoena.

Dated this 24 day of July, 2013.

MAUK & BURGOYNE

By 

Briane Nelson Mitchell,
An Attorney Licensed in Idaho
Pursuant to IRCP 45(a)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of July, 2013, I caused a true and correct copy of the above and foregoing instrument to be served upon the following individuals in the manner indicated below:

Susan Simpson
765 Channing Ave.
Palo Alto, CA 94301

☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

*As Conservator and Guardian of
Gerald Durk Simpson*

Thomas B. High
Bren E. Mollerup
Benoit, Alexander, Harwood & High, LLP
126 Second Avenue North
P.O. Box 366
Twin Falls, ID 83303-0366

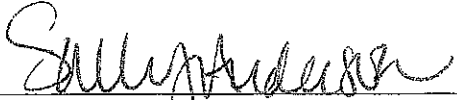
☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

Attorneys for Defendant State of Idaho

Ian N. Service
Bannock County Prosecutor's Office
624 E Center
P.O. Box P
Pocatello, ID 83201

☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

Attorneys for Defendant Bannock County


Sally Anderson,
Assistant to Briane Nelson Mitchell

(16105\Discovery\Notice of Service (1st Supple Ans to Plain 1st Set of Interrogs to Def & 1st Supple Res to Plain 1st Set of Doc Req to Def)\TBH\ka)

* * * * *

NOTICE OF SERVICE OF DISCOVERY DOCUMENTS

* * * * *

RECEIVED

TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANT STATE OF
IDAHO; FIRST SUPPLEMENTAL RESPONSES TO PLAINTIFF'S FIRST SET OF
DOCUMENT REQUESTS TO DEFENDANT STATE OF IDAHO; and PRIVILEGE AND
STATUTORY EXEMPTION LOG were served upon the following attorney for the Plaintiff, by
placing the same in the U.S. mail with postage prepaid thereon to:

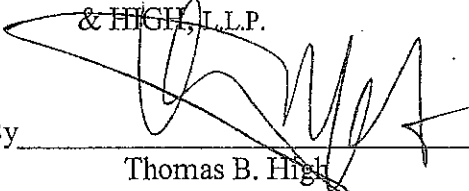
William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743

The original documents are being sent to Plaintiff's counsel to be retained in his file.

DATED this 15th day of July, 2013.

BENOIT, ALEXANDER, HARWOOD
& HIGH, L.L.P.

By


Thomas B. High
Attorneys for Defendant State of Idaho

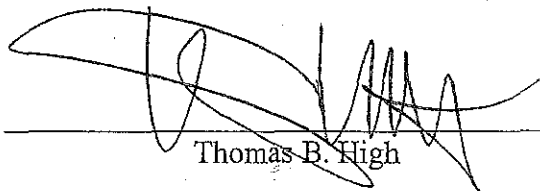
CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 15th day of July, 2013, he caused a true and correct copy of the **NOTICE OF SERVICE OF DISCOVERY DOCUMENTS** to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743
(Attorneys for Plaintiff)

Hand Delivered
U.S. Mail
Fax
Fed. Express

<input type="checkbox"/>
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<input type="checkbox"/>
<input type="checkbox"/>



Thomas B. High

Thomas B. High, ISB No. 2430
Bren E. Mollerup, ISB No. 7959
BENOIT, ALEXANDER,
HARWOOD & HIGH, L.L.P.
126 Second Avenue North
P.O. Box 366
Twin Falls, Idaho 83303-0366
Telephone: (208) 733-5463
Fax: (208) 734-1438
Email: high@benoitlaw.com
Email: mollerup@benoitlaw.com
Attorneys for Defendant State of Idaho
(16105\Discovery\First Supp to Plain 1st Set of Interrogs\BEM)

* * * * *

**FIRST SUPPLEMENTAL
ANSWERS TO PLAINTIFF'S FIRST
SET OF INTERROGATORIES TO
DEFENDANT STATE OF IDAHO**

* * * * *

RECEIVED

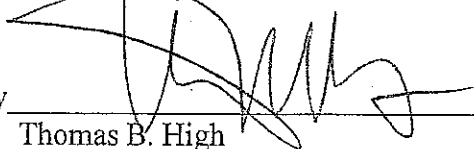
18

Rule 26(f) Certification.

DATED this 15th day of July, 2013.

BENOIT, ALEXANDER, HARWOOD
& HIGH, L.L.P.

By

A handwritten signature in black ink, appearing to read 'T. High', is written over a horizontal line.

Thomas B. High

Attorneys for Defendant State of Idaho

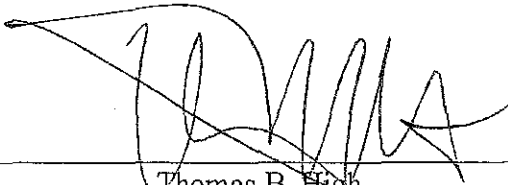
CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 15th day of July, 2013, he caused a true and correct copy of the **ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANT STATE OF IDAHO** to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743
(Attorneys for Plaintiff)

Hand Delivered
U.S. Mail
Fax
Fed. Express

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<input checked="" type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>



Thomas B. High

Date Changed	Staff Person	Description of Changes
AM		• Middle Name changed from " to 'Durk'.
10/5/2010 9:26 AM	Myers, Gioconda	• Accessed Client Profile Screen
10/5/2010 9:26 AM	Myers, Gioconda	• Accessed Client Record: "Simpson, Durk, Client ID: 11112156889204U"
10/1/2010 2:14 PM	Myers, Gioconda	• Accessed Client Profile Screen
10/1/2010 2:14 PM	Myers, Gioconda	• Accessed Client Record: "Simpson, Durk, Client ID: 11112156889204U"
10/1/2010 11:31 AM	Teeter, Jamie, LPC	• Accessed Client Profile Screen
10/1/2010 11:31 AM	Teeter, Jamie, LPC	• Closed Case: 1, in Facility: "AMH Pocatello"
10/1/2010 9:59 AM	Bailey, Deborah	• Accessed Client Eligibility for Case: 2
10/1/2010 9:53 AM	Bailey, Deborah	• Accessed Admission Screen for Case: 2
10/1/2010 9:51 AM	Bailey, Deborah	• Accessed Client Profile Screen
10/1/2010 8:33 AM	Buskey, Michelle	• Accessed Client Profile Screen
10/1/2010 8:32 AM	Bailey, Deborah	• Accessed Admission Screen for Case: 1
10/1/2010 8:28 AM	Chadwick, Sue	• Accessed Admission Screen for Case: 1
10/1/2010 8:27 AM	Bailey, Deborah	• Accessed Client Record: "Simpson, Durk, Client ID: 11112156889204U"
10/1/2010 8:27 AM	Chadwick, Sue	• Accessed Client Record: "Simpson, Durk, Client ID: 11112156889204U"
10/1/2010 8:23 AM	Buskey, Michelle	• Accessed Admission Screen for Case: 2
10/1/2010 8:23 AM	Buskey, Michelle	• Accessed Admission Screen for Case: 1
10/1/2010 8:22 AM	Buskey, Michelle	• Accessed Client Record: "Simpson, Durk, Client ID: 11112156889204U"
10/1/2010 8:19 AM	Weers, Ritchie, LCPC	• Accessed Client Profile Screen
10/1/2010 8:19 AM	Weers, Ritchie, LCPC	• Accessed Client Record: "Simpson, Durk, Client ID: 11112156889204U"
10/1/2010 8:18 AM	Woolery, Deborah	• Accessed Admission Screen for Case: 1
10/1/2010 8:14 AM	Woolery, Deborah	• Accessed Client Record: "Simpson, Durk, Client ID: 11112156889204U"
10/1/2010 8:14 AM	Woolery, Deborah	• Accessed Client Profile Screen
10/1/2010 7:59	Teeter, Jamie, LPC	• Reopened Case: 1, in Facility: "AMH Pocatello"

Date Changed	Staff Person	Description of Changes
AM		
10/1/2010 7:59 AM	Teeter, Jamie, LPC	• Accessed Intake Screen for Case: 1
10/1/2010 7:59 AM	Teeter, Jamie, LPC	• Accessed Admission Screen for Case: 1
10/1/2010 7:57 AM	Teeter, Jamie, LPC	• Accessed Client Record: "Simpson, Durk, Client ID: 11112156889204U"
9/30/2010 6:04 PM	Stohl, Danielle	• Accessed Admission Screen for Case: 2
9/30/2010 6:04 PM	Stohl, Danielle	• Accessed Mental Health Screen for Case: 2
9/30/2010 6:04 PM	Stohl, Danielle	• Closed Case: 1, in Facility: "AMH Pocatello"
9/30/2010 6:02 PM	Stohl, Danielle	• Reopened Case: 1, in Facility: "AMH Pocatello"
9/30/2010 6:01 PM	Stohl, Danielle	• Accessed Admission Screen for Case: 1
9/30/2010 6:01 PM	Stohl, Danielle	• Accessed Intake Screen for Case: 1
9/30/2010 6:01 PM	Stohl, Danielle	• Accessed Client Profile Screen
9/30/2010 6:01 PM	Stohl, Danielle	• Accessed Client Record: "Simpson, Durk, Client ID: 11112156889204U"
9/30/2010 5:59 PM	Woolery, Deborah	• Accessed Intake Screen for Case: 1
9/30/2010 5:57 PM	Woolery, Deborah	• Accessed Admission Screen for Case: 1
9/30/2010 5:54 PM	Woolery, Deborah	• Accessed Admission Screen for Case: 2
9/30/2010 5:30 PM	Woolery, Deborah	• Accessed ClientBenefitApplication for Case: 2
9/30/2010 5:14 PM	Bills, Kebai, PA	• Accessed Client Record: "Simpson, Durk, Client ID: 11112156889204U"
9/30/2010 5:07 PM	Woolery, Deborah	• Accessed Client Profile Screen
9/30/2010 5:06 PM	Woolery, Deborah	• Accessed Discharge Plan for Case: 2
9/30/2010 5:04 PM	Woolery, Deborah	• Accessed Intake Screen for Case: 2
9/30/2010 5:02 PM	Woolery, Deborah	• Accessed Mental Health Screen for Case: 2
9/30/2010 4:58 PM	Woolery, Deborah	• Accessed Notes Screen for Case: 2
9/30/2010 4:58 PM	Woolery, Deborah	• Accessed Client Record: "Simpson, Durk, Client ID: 11112156889204U"
9/30/2010 3:46	Eckersell, William, LCPC	• Accessed Notes Screen for Case: 2

Date Changed	Staff Person	Description of Changes
PM		
9/30/2010 11:43 AM	Weers, Ritchie, LCPC	<ul style="list-style-type: none"> Accessed Mental Health Screen for Case: 2
9/30/2010 11:43 AM	Weers, Ritchie, LCPC	<ul style="list-style-type: none"> Accessed Client Record: "Simpson, Durk, Client ID: 11112156889204U"
9/30/2010 11:07 AM	Eckersell, William, LCPC	<ul style="list-style-type: none"> Accessed Mental Health Screen for Case: 2
9/30/2010 11:05 AM	Eckersell, William, LCPC	<ul style="list-style-type: none"> Accessed Intake Screen
9/30/2010 10:56 AM	Eckersell, William, LCPC	<ul style="list-style-type: none"> Accessed Intake Screen for Case: 1
9/30/2010 10:54 AM	Eckersell, William, LCPC	<ul style="list-style-type: none"> Accessed Client Profile Screen
9/30/2010 10:53 AM	Eckersell, William, LCPC	<ul style="list-style-type: none"> Accessed Mental Health Screen for Case: 1
9/30/2010 10:53 AM	Eckersell, William, LCPC	<ul style="list-style-type: none"> Accessed Client Record: "Simpson, Durk, Client ID: 11112156889204U"
9/29/2010 12:54 PM	Wilson, Cindy	<ul style="list-style-type: none"> Accessed Client Record: "Simpson, Durk, Client ID: 11112156889204U"
9/28/2010 11:09 AM	Bills, Kebai, PA	<ul style="list-style-type: none"> Accessed Mental Health Screen for Case: 1
9/28/2010 11:09 AM	Bills, Kebai, PA	<ul style="list-style-type: none"> Accessed Client Record: "Simpson, Durk, Client ID: 11112156889204U"
9/28/2010 10:50 AM	Chadwick, Sue	<ul style="list-style-type: none"> Accessed Encounter Summary Report for Case: 1
9/28/2010 10:31 AM	Chadwick, Sue	<ul style="list-style-type: none"> Accessed Encounter Screen for Case: 1
9/28/2010 10:29 AM	Chadwick, Sue	<ul style="list-style-type: none"> Accessed Discharge Screen for Case: 1
9/28/2010 10:29 AM	Chadwick, Sue	<ul style="list-style-type: none"> Accessed Client Record: "Simpson, Durk, Client ID: 11112156889204U"
9/8/2010 4:03 PM	Wilson, Cindy	<ul style="list-style-type: none"> Accessed Client Record: "Simpson, Durk, Client ID: 11112156889204U"
8/9/2010 5:03 PM	Wilson, Cindy	<ul style="list-style-type: none"> Accessed Discharge Screen for Case: 1
8/9/2010 5:02 PM	Wilson, Cindy	<ul style="list-style-type: none"> Accessed Client Profile Screen
8/9/2010 4:43 PM	Bloxham, Richard, LSW	<ul style="list-style-type: none"> Accessed Encounter Screen for Case: 1
8/9/2010 4:43 PM	Bloxham, Richard, LSW	<ul style="list-style-type: none"> Accessed Client Record: "Simpson, Durk, Client ID: 11112156889204U"
8/9/2010 11:07 AM	Wilson, Cindy	<ul style="list-style-type: none"> Accessed Admission Screen for Case: 1
8/9/2010 11:06 AM	Wilson, Cindy	<ul style="list-style-type: none"> Accessed Encounter Screen for Case: 1
8/9/2010 11:06 AM	Wilson, Cindy	<ul style="list-style-type: none"> Accessed Client Record: "Simpson, Durk, Client ID: 11112156889204U"
8/6/2010 2:29 PM	Wilson, Cindy	<ul style="list-style-type: none"> Accessed Client Record: "Simpson, Durk, Client ID: 11112156889204U"

Thomas B. High, ISB No. 2430
Bren E. Mollerup, ISB No. 7959
BENOIT, ALEXANDER,
HARWOOD & HIGH, L.L.P.
126 Second Avenue North
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Telephone: (208) 733-5463
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Email: high@benoitlaw.com
Email: mollerup@benoitlaw.com
Attorneys for Defendant State of Idaho
(16105/PrivilegeLog/BEM)

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

* * * * *

RYAN M. MITCHELL,

Plaintiff,

V.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity,
and BANNOCK COUNTY, IDAHO, a
political subdivision, SUSAN SIMPSON, as
Conservator and Guardian of Gerald Durk
Simpson, and DOES 1-25,

Defendants.

Case No. CV-12-4124-OC

PRIVILEGE AND STATUTORY EXEMPTION LOG

* * * * *

COMES NOW, the above entitled Defendant, State of Idaho, by and through its attorneys of record, Benoit, Alexander, Harwood & High, LLP, and submits this Privilege Log for documents

PRIVILEGE AND STATUTORY EXEMPTION LOG - 1

MAUK & BURGOYNE

JUL 16 2013

RECORDED

EXHIBIT

tabbies'

19

250 of 501

requested by Plaintiff in their Initial Discovery Request for which Defendants are claiming a privilege or statutory exemption.

For each document withheld you will find listed the type of document, Bates Number, date of creation, the recipient of the document, and the subject matter, along with the applicable privilege.

DOCUMENT	BATES NO.	DATE OF CREATION	RECIPIENT/AUTHOR OF DOCUMENT	SUBJECT MATTER	PRIVILEGE/STATUTORY EXEMPTION
Critical Incident Report	130	9/28/10	Division of Behavioral Health, Region 6	Report regarding Gerald Simpson	These documents have been provided but have been redacted to protect healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-340C(13).
Medical Treatment records for Mr. Simpson	74-84	Various	N/A	Evaluation and treatment of Mr. Simpson	These documents have been provided but have been redacted to protect healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-340C(13).

PRIVILEGE AND STATUTORY EXEMPTION LOG - 2

Letter from Heath Sommers, Ph.D.	179-180	6/23/10	Mr. Simpson	Letter regarding health treatment from Adult Mental Health	This document has been withheld to protect healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-340C(13).
Discharge Summary	181	8/9/10	N/A	Notes on Mr. Simpson's treatment.	This document has been withheld to protect healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-340C(13).
Treatment notes regarding Mr. Simpson	182-192	Various	Various	Treatment notes regarding Mr. Simpson's treatment at adult mental health.	These documents have been withheld to protect healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-340C(13).
Discharge Summary	193	8/9/10	N/A	Medical information	This document has been withheld to protect healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-340C(13).

Email from Brandon Clark regarding Mr. Simpsons treatment	194	7/14/10	Cindy Wilson	Medical treatment information	This document has been withheld to protect healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-340C(13).
Visitor's Report in Case No. CV-2012-0862	343-346	5/30/12	Holly C. Owens	Visitor's Report	This document has been withheld as it is exempt from disclosure under I.C. § 66-348; I.C. § 9-340A(2).
Letter from Chad L. Murdock	347-349	5/29/12	Judge Hansen	Dr. Murdock's analysis of Mr. Simpson	This document has been withheld as it is exempt from disclosure under I.C. § 66-348; I.C. § 9-340A(2); 45 C.F.R. 164 et. seq; I.C. § 9-340C(13).
Report of Guardian Ad Litem in case no CV-1012-0862 Bingham County	350-352	6/5/12	Angela Jensen	Guardian Ad Litem Report	This document has been withheld as it is exempt from disclosure under I.C. § 66-348; I.C. § 9-340A(2);
Acceptance of Appointment of Guardianship and Conservator for	353-354	4/11/12	Susan Simpson	Pleading in Guardianship matter.	This document has been withheld as it is exempt from disclosure under

PRIVILEGE AND STATUTORY EXEMPTION LOG - 4

an Incapacitated person in Case No. CV 2012-0862 Bingham County					I.C. § 66-348; I.C. § 9-340A(2);
Order Appointing Counsel, Visitor and Physician Case No. CV 1012-0862, Bingham County	355-357	5/4/12	Signed by Judge Scott Hansen	Order in Guardianship case	This document has been withheld as it is exempt from disclosure under I.C. § 66-348; I.C. § 9-340A(2);
Notice of Hearing on Petition for Appointment of Guardian/Conservator Case No. CV-2012-0862	358-359	5/2/12	James Price, Attorney General	Notice of Hearing in Guardianship case	This document has been withheld as it is exempt from disclosure under I.C. § 66-348; I.C. § 9-340A(2);
Petition for Guardianship case no. CV 2012-0862, Bingham County	360-363	5/2/12	James Price, Attorney General	Petition for Guardianship	This document has been withheld as it is exempt from disclosure under I.C. § 66-348; I.C. § 9-340A(2);
Conservator's inventory in Case No. CV 2012-0862, Bingham County	364-385	10/1/12	Susan Simpson	Conservator's Inventory	This document has been withheld as it is exempt from disclosure under I.C. § 66-348; I.C. § 9-340A(2);
Communication by email from Region Six Adult Mental Health	386-402	4/2/12 – 6/20/12	Attorney General's Office Staff	Attorney Client Communication	Attorney/Client Privilege and Work Product

PRIVILEGE AND STATUTORY EXEMPTION LOG - 5

Letter from Nels Sather, Ph.D	403-406	3/29/12	Honorable Rick Carnaroli	Dr. Sather's Analysis of Mr. Simpson	This document has been withheld as it is exempt from disclosure under I.C. § 66-348; I.C. § 9- 340A(2); 45 C.F.R. 164 et. seq; I.C. § 9- 340C(13).
Letter from Nels Sather, Ph.D	407-409	5/16/11	Honorable Rick Carnaroli	Dr. Sather's Analysis of Mr. Simpson	This document has been withheld as it is exempt from disclosure under I.C. § 66-348; I.C. § 9- 340A(2); 45 C.F.R. 164 et. seq; I.C. § 9- 340C(13).
Letter from Richard Baker, Ph.D	410-412	11/17/11	Honorable Rick E. Carnaroli	Dr. Baker's Analysis of Mr. Simpson	This document has been withheld as it is exempt from disclosure under I.C. § 66-348; I.C. § 9- 340A(2); 45 C.F.R. 164 et. seq; I.C. § 9- 340C(13).
Letter from Richard Baker, Ph.D	413-415	7/10/12	Honorable Rick E. Carnaroli	Dr. Baker's Analysis of Mr. Simpson	This document has been withheld as it is exempt from disclosure under I.C. § 66-348; I.C. § 9- 340A(2); 45 C.F.R. 164 et.

					seq; I.C. § 9-340C(13).
Communication by email from Region Six Adult Mental Health	416-475	3/5/12-5/31/12	Attorney General's Office Staff	Attorney Client Communication	Attorney/Client Privilege and Work Product
Visitor's Report in Case No. CV-2012-0862	476-479	5/30/12	Holly C. Owens	Visitor's Report	This document has been withheld as it is exempt from disclosure under I.C. § 66-348; I.C. § 9-340A(2).
Acceptance of Appointment of Guardianship and Conservator for an Incapacitated person in Case No. CV 2012-0862 Bingham County	480-481	4/11/12	Susan Simpson	Pleading in Guardianship matter.	This document has been withheld as it is exempt from disclosure under I.C. § 66-348; I.C. § 9-340A(2);
Report of Guardian Ad Litem in case no CV-1012-0862 Bingham County	484-485	6/5/12	Angela Jensen	Guardian Ad Litem Report	This document has been withheld as it is exempt from disclosure under I.C. § 66-348; I.C. § 9-340A(2);
Communication by email from Region Six Adult Mental Health	490-511	7/2/12 – 7/23/12	Attorney General's Office Staff	Attorney Client Communication	Attorney/Client Privilege and Work Product
State Hospital South records from Episode #1	512-570	4/8/75 – 5/8/75	Various	Treatment Records for Mr. Simpson	These documents have been withheld to protect

PRIVILEGE AND STATUTORY EXEMPTION LOG - 7

					healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-340C(13).
State Hospital South records from Episode #2	571-609	6/16/75-6/20/75	Various	Treatment Records for Mr. Simpson	These documents have been withheld to protect healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-340C(13).
State Hospital South Records from Episode #3	610-695	2/24/81-6/10/81	Various	Treatment Records for Mr. Simpson	These documents have been withheld to protect healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-340C(13).
State Hospital South Records from Episode #4	696-1018	10/12/10-12/02/10	Various	Treatment Records for Mr. Simpson	These documents have been withheld to protect healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-340C(13).
State Hospital South Records from Episode #5	1019-2005	3/17/11-11/22/11	Various	Treatment Records for Mr. Simpson	These documents have been withheld to protect

PRIVILEGE AND STATUTORY EXEMPTION LOG - 8

					healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-340C(13).
State Hospital South Records from Episode #6	2006-2073	4/27/12-7/16/12	Various	Treatment Records for Mr. Simpson	These documents have been withheld to protect healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-340C(13).
Treatment summaries and progress notes for Mr. Simpson	2074-2421	4/27/12-7/16/12	Various	Treatment Records for Mr. Simpson	These documents have been withheld to protect healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-340C(13).
Medical records and Treatment files pertaining to Mr. Simpson	2422-5620	4/8/75-Current	Various	Treatment Records for Mr. Simpson	These documents have been withheld to protect healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-

					340C(13).
Medical records and Treatment files pertaining to Mr. Simpson	5621-5859	10/1995-6/1997	Various	Treatment Records for Mr. Simpson	These documents have been withheld to protect healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-340C(13).
Medical Records and Treatment files pertaining to Mr. Simpson	5902-5950	7/17/12-7/24/12	Various	Treatment records for Mr. Simpson	These documents have been withheld to protect healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-340C(13).
Medical Records and Treatment files pertaining to Mr. Simpson	5984-6094	8/27/09-1/17/13	Various	Treatment records for Mr. Simpson	These documents have been withheld to protect healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-340C(13).
Treatment Summary Updates for Mr. Simpson	5883-5889	3/17/11	N/A	Treatment records for Mr. Simpson	These documents have been withheld to protect healthcare information protected by 45 C.F.R. 164 et.

					seq; I.C. § 9-340C(13).
Emails from Tracy Sessions	5876	June 19, 2012	Sara Spaulding to Medicaid	Treatment and Healthcare information for a patient other than Mr. Simpson <u>Redacted</u>	Redacted to protect healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-340C(13).
Lighthouse Living Medical Records Request	6095-6102	July 13, 2012	State Hospital South to Lighthouse Living Administrator	Treatment and medical information regarding Mr. Simpson	These documents have been withheld to protect healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-340C(13).

DATED this 15th day of July, 2013.

BENOIT, ALEXANDER, HARWOOD
& HIGH, L.L.P.

By


Thomas B. High

Attorneys for Defendant State of Idaho

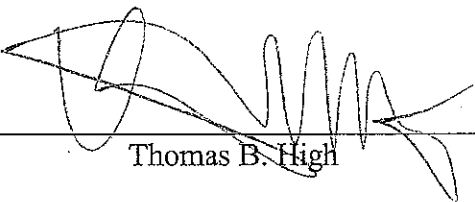
CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 18th day of July, 2013, he caused a true and correct copy of the **PRIVILEGE AND STATUTORY EXEMPTION LOG** to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743
(Attorneys for Plaintiff)

Hand Delivered
U.S. Mail
Fax
Fed. Express

<input type="checkbox"/>
<input checked="" type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>



Thomas B. High

Thomas B. High, ISB No. 2430
 Bren E. Mollerup, ISB No. 7959
 BENOIT, ALEXANDER,
 HARWOOD & HIGH, L.L.P.
 126 Second Avenue North
 P.O. Box 366
 Twin Falls, Idaho 83303-0366
 Telephone: (208) 733-5463
 Fax: (208) 734-1438
 Email: high@benoitlaw.com
 Email: mollerup@benoitlaw.com
 Attorneys for Defendant State of Idaho
 (16105/ MOTION FOR PROTECTIVE ORDER/BEM)

FILED
 BANNOCK COUNTY
 CLERK OF THE COURT
 2013 JUL 30 AM 10:16
 BY
 DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RYAN M. MITCHELL,

Plaintiff,

v.

GERALD DURK SIMPSON, an individual,
 STATE OF IDAHO, a governmental entity,
 and BANNOCK COUNTY, IDAHO, a
 political subdivision, SUSAN SIMPSON, as
 Conservator and Guardian of Gerald Durk
 Simpson, and DOES 1-25,

Defendants.

Case No. CV-12-4124-OC

**MOTION FOR PROTECTIVE
 ORDER**

COMES NOW, the above entitled Defendant, State of Idaho ("State"), by and through its attorneys of record Benoit, Alexander, Harwood & High, LLP and submits this Motion for Protective Order pursuant to Idaho Rule of Civil Procedure 26(c).

MOTION FOR PROTECTIVE ORDER - 1

On June 26, 2013 the State filed a Motion for Summary Judgment with this Court. Subsequently, Plaintiff filed a response on July 26, 2013. This response was received by the State on July 29, 2013. Plaintiff simultaneously noticed the depositions of Dr. Heath Sommer and a 30(b)(6) deposition of the State of Idaho. These depositions have been noticed for August 13th and 14th (the two days following the hearing on the motion for summary judgment). The State now moves for a protective order delaying further depositions until such time as the Court rules on the pending motion for summary judgment.

If this Court grants the summary judgment it will be dispositive of this case. As such, going forward with depositions before the Court has ruled on the summary judgment would subject the State (and Plaintiff) to undue and unnecessary expense.

Given, the procedural status of the case, Defendant requests that an order be entered staying depositions until such time as the Court rules on the pending motion for summary judgment.

DATED this 27th day of July, 2013.

BENOIT, ALEXANDER, HARWOOD
& HIGH, L.L.P.

By

Thomas B. High

Attorneys for Defendant State of Idaho

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 29th day of July, 2013, he caused a true and correct copy of the MOTION FOR PROTECTIVE ORDER to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743
(Attorneys for Plaintiff)

Hand Delivered ☐
U.S. Mail ☐
Fax ☒
Fed. Express ☐



Thomas B. High

Thomas B. High, ISB No. 2430
 Bren E. Mollerup, ISB No. 7959
 BENOIT, ALEXANDER,
 HARWOOD & HIGH, L.L.P.
 126 Second Avenue North
 P.O. Box 366
 Twin Falls, Idaho 83303-0366
 Telephone: (208) 733-5463
 Fax: (208) 734-1438
 Email: high@benoitlaw.com
 Email: mollerup@benoitlaw.com
 Attorneys for Defendant State of Idaho
 (16105\Discovery\Notice of Service (2nd Supple Ans to Plain 1st Set of Interrogs to Def)\TBH\ka)

FILED
 BANNOCK COUNTY
 CLERK OF THE COURT
 2013 AUG - 1 AM 10:00
 BY *[Signature]*
 DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RYAN M. MITCHELL,

Plaintiff,

v.

GERALD DURK SIMPSON, an individual,
 STATE OF IDAHO, a governmental entity,
 and BANNOCK COUNTY, IDAHO, a
 political subdivision, SUSAN SIMPSON, as
 Conservator and Guardian of Gerald Durk
 Simpson, and DOES 1-25,

Defendants.

Case No. CV-12-4124-OC

**NOTICE OF SERVICE OF
 DISCOVERY DOCUMENT**

Pursuant to Rule 33 of the Idaho Rules of Civil Procedure, notice is hereby given by the undersigned party that the original and a copy of the **SECOND SUPPLEMENTAL ANSWERS**

NOTICE OF SERVICE OF DISCOVERY DOCUMENT - 1

J. Dunn

TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANT STATE OF

IDAHO were served upon the following attorney for the Plaintiff, by placing the same in the U.S.

mail with postage prepaid thereon to:

William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743

The original document is being sent to Plaintiff's counsel to be retained in his file.

DATED this 30th day of July, 2013.

BENOIT, ALEXANDER, HARWOOD
& HIGH, L.L.P.

By


Thomas B. High

Attorneys for Defendant State of Idaho

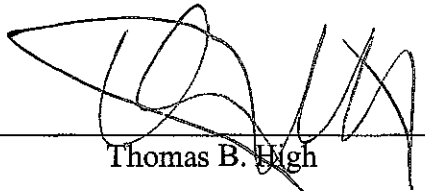
CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 30th day of July, 2013, he caused a true and correct copy of the **NOTICE OF SERVICE OF DISCOVERY DOCUMENT** to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743
(Attorneys for Plaintiff)

Hand Delivered
U.S. Mail
Fax
Fed. Express

<input type="checkbox"/>
<input checked="" type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>


Thomas B. High

NOTICE OF SERVICE OF DISCOVERY DOCUMENT - 2

Thomas B. High, ISB No. 2430
 Bren E. Mollerup, ISB No. 7959
 BENOIT, ALEXANDER,
 HARWOOD & HIGH, L.L.P.
 126 Second Avenue North
 P.O. Box 366
 Twin Falls, Idaho 83303-0366
 Telephone: (208) 733-5463
 Fax: (208) 734-1438
 Email: high@benoitlaw.com
 Email: mollerup@benoitlaw.com
 Attorneys for Defendant State of Idaho
 (16105/REPLY MSJ/BEM)

FILED
 BANNOCK COUNTY
 CLERK OF THE COURT
 2013 AUG -5 AM 11:15
 BY [Signature]
 DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RYAN M. MITCHELL,

Plaintiff,

v.

GERALD DURK SIMPSON, an individual,
 STATE OF IDAHO, a governmental entity,
 and BANNOCK COUNTY, IDAHO, a
 political subdivision, SUSAN SIMPSON, as
 Conservator and Guardian of Gerald Durk
 Simpson, and DOES 1-25,

Defendants.

Case No. CV-12-4124-OC

**REPLY TO PLAINTIFF'S
 MEMORANDUM IN OPPOSITION
 TO STATE'S MOTION FOR
 SUMMARY JUDGMENT**

COMES NOW, the above entitled Defendant, State of Idaho ("State"), by and through its attorneys of record Benoit, Alexander, Harwood & High, LLP, and submits this Reply to Plaintiff's Memorandum in Opposition to State's Motion for Summary Judgment.

REPLY TO PLAINTIFF'S MEMORANDUM IN OPPOSITION TO STATE'S MOTION FOR SUMMARY JUDGMENT - 1

Dwm

INTRODUCTION

The basic claims in the opposition are 1) there is no statutory bar regarding the Crime Victims Rights claims because Plaintiff only seeks equitable relief; 2) the State is not immune from liability under the Tort Claims Act because its actions were "willful, wanton or reckless."

Plaintiff also has submitted a lengthy statement of undisputed facts in support of its opposition. It should be noted that this statement contains counsel's classifications, characterizations and argument regarding the facts at issue. Such characterization is inappropriate and Defendants object to the same. Additionally, as will be discussed below, Plaintiff attempts to take statements out of context and twist the meaning of interrogatory answers and evidence submitted to the Court.

In the opposition Plaintiff also argues that the evidence sought to be submitted by the State is not admissible but nonetheless attempts to use the same evidence in support of his opposition. The evidence submitted by the State is admissible and should be considered by this Court.

DISCUSSION

Plaintiff first goes into extensive detail in the "factual background" section of his opposition. This section of Plaintiff's briefing is largely characterizations of evidence and unsupportable conclusions. As such, each "fact" is not addressed. However, each of Plaintiff's contentions as to why summary judgment is inappropriate is addressed in turn.

1. Standard on Summary Judgment.

Plaintiff correctly states that the moving party on summary judgment bears the burden to show there is no genuine issue of fact and that judgment is proper as a matter of law. Idaho R. Civ. P. 56(c). Plaintiff is also correct that the non moving party is entitled to all reasonable inferences in its favor.

However, Plaintiff fails to note if the moving party challenges an element of the nonmoving party's case on the basis that no genuine issue of material fact exists, the burden then shifts to the nonmoving party to come forward with sufficient evidence to create a genuine issue of fact. *Tingley v. Harrison*, 125 Idaho 86, 90, 867 P.2d 960, 964 (1994). Summary judgment is properly granted in favor of the moving party, when the nonmoving party fails to establish the existence of an element essential to that party's case upon which that party bears the burden of proof at trial. *Thomson v. Idaho Ins. Agency, Inc.*, 126 Idaho 527, 530-531, 887 P.2d 1034, 1037-1038 (1994); *Badell v. Beeks*, 115 Idaho 101, 102, 765 P.2d 126, 127 (1988).

The party opposing the summary judgment motion "may not rest upon the mere allegations or denials of that party's pleadings, but the party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Idaho R. Civ. P. 56(e). If the nonmoving party does not come forward with evidence as provided in Idaho R. Civ. P. 56(e), then summary judgment, if appropriate, shall be entered against the party. *Id.*; *State v. Shama Resources Ltd. Partnership*, 127 Idaho 267, 270, 899 P.2d 977, 980 (1995).

A mere scintilla of evidence or only a slight doubt as to the facts is insufficient to withstand summary judgment; there must be sufficient evidence upon which a jury could reasonably return a verdict for the party opposing summary judgment. *Corbridge v. Clark Equip. Co.*, 112 Idaho 85, 87, 730 P.2d 1005, 1007 (1986); *Petricevich v. Salmon River Canal Co.*, 92 Idaho 865, 871, 452 P.2d 362, 368 (1969). In the case at hand, Plaintiff has not come forward with evidence which shows a genuine issue for trial.

2. The State's Affidavits are Admissible and Must be Considered by the Court.

Plaintiff moves to strike (without filing a motion) the affidavits of Jodi Osborn and Sue Chadwick submitted in support of the State's motion for summary judgment. This "motion" is made on the basis that the affidavits are conclusory, not based upon personal knowledge and contain hearsay. Interestingly, Plaintiff argues that he can use the same documents he objects to in support of his opposition.

In regard to the Osborn affidavit, Ms. Osborn clearly states that she is the Financial Executive Office for Idaho Health and Welfare. She then states that the Idaho legislature cut her department's budget by \$36,550,600. This is clearly based upon her knowledge gained through her position at the department. Plaintiff attempts to exclude this affidavit is based upon a lack of specific words in Ms. Osborn's affidavit. However, when the affidavit is viewed as whole it is clearly admissible.

Contrary to Plaintiff's assertion, there is a clear connection between Ms. Osborn's testimony and other evidence provided in support of summary judgment. Attachment "C" to the Chadwick Affidavit makes it clear that the department has been struggling for "more than two

years” on how to move forward with “diminished resources.” While the email from Dr. Sommers indicates budget cuts alone are not the sole issue for termination of services, it is a large factor. As such, the amount the budget was decreased by is relevant and informative to the Court as to why termination of services was necessary during this time frame. There is a no other inference to be drawn from these documents and affidavits other than the fact that budget cuts were a driver in terminating services.

With regard to Ms. Chadwick’s affidavit, Plaintiff argues the affidavit does not comply with the public records exception rule set forth in IRE 803(8). However, Plaintiff fails to recognize that these records are admissible under IRE 803(6).

Ms. Chadwick clearly states she makes the affidavit of her own personal knowledge, she is familiar with, as a result of her role as office supervisor, documents maintained by the Idaho Department of Health and Welfare. She also states that each document is kept in the normal course of business at the department. Clearly, this satisfies the requirement of IRE 803(6) as she has established she has knowledge and these records are kept in the normal course of business. As an Office Services Supervisor, Ms. Chadwick is clearly a “qualified witness” under IRE 803(6). The records submitted are admissible under IRE 803(6) and as such are clearly admissible and Plaintiff’s “motion” fails.

Plaintiff however, seeks to use these same documents in support of opposition to the motion even though he classifies them as demonstrating a “lack of trustworthiness.” This is nothing more than an attempt by the Plaintiff to have his cake and eat it too. Clearly, these documents must be considered by the Court.

3. Plaintiff's Claims under Victims Rights.

In response to the summary judgment regarding Plaintiff's claims under the victims' rights provision of Idaho Code and the Idaho State Constitution, Plaintiff argues that summary judgment is not appropriate because no money damages are being sought with respect to his victims' rights claims. Plaintiff correctly states that the constitution and the Code do not specifically eliminate claims for remedies such as declaratory or injunctive relief.

Presumably the injunction sought would order the State to not violate the Idaho Code or the Constitution. This is an obligation that the State is already under and an injunction provides no remedy or increased duty on the part of any State agency to abide by the law. As such, the idea that an injunction is truly what is sought is absurd. Plaintiff seeks to bootstrap his claim for declaratory judgment to his claim for damages and use it as evidence against the State as evidence of negligence. Allowing Plaintiff to do this squarely violates the provision against money damages.

It should also be noted that it was Bannock County, and not the State of Idaho, that failed to provide any notice or participation in the criminal prosecution that may have been required under the Code or the Constitution. Bannock County has entered into a Consent Decree admitting the same. There is no evidence that the State took any action whatsoever in relation to Plaintiff's involvement with the criminal proceeding.

It appears to be Plaintiff's argument that he should have been advised of the guardianship proceedings initiated for Mr. Simpson. However, there is nothing in the Code or Constitution that

would indicate such a right. As Plaintiff can point to no inappropriate action by the State in regard to his Victim's Rights, summary judgment must be granted.

4. The Idaho Tort Claims Act Provides the State with Immunity

Plaintiff argues there is no evidence to support the State's theory that Mr. Simpson's termination was a discretionary function. Plaintiff also argues that there is evidence to support the argument that the State acted with "willful or wanton conduct." However, Plaintiff fails to address the issues regarding liability for those under State care or custody and the fact that Mr. Simpson was no longer under State care at the time of the shooting. This is rather telling as it would appear Plaintiff concedes to the State's motion in this regard.

First with regard to discretionary function immunity, Plaintiff argues this position is inconsistent with sworn answers provided to interrogatories. Specifically, Plaintiff cites to an answer where the state references the letter informing Mr. Simpson why his services were being terminated. However, as noted above, this was a decision that was driven by funding. The attachment to the Chadwick affidavit clearly establishes this fact. Simply because Mr. Simpson was not informed in detail on the State's finances means nothing. While this was not the only factor in cutting off services it was, nonetheless, a factor that was part of the decision. As a result discretionary function immunity applies to the case at hand. Only in those situations where the State is shown to act with malice or criminal intent is the State liable. No such evidence is present in the current case. *See Idaho Code §§ 6-904; 6-904A.*

Plaintiff cites to several cases in support of this argument, without discussing them. However, the Plaintiff fails to discuss the important distinction between routine matters and other

decision governmental agencies must make. "Routine matters not requiring evaluation of broad policy factors will likely be 'operational,' whereas decisions involving a consideration of the financial, political, economic, and social effects of a particular plan are likely 'discretionary' and will be accorded immunity." *Hunter v. Dep't of Corr.*, 138 Idaho 44, 48, 57 P.3d 755, 759 (2002). All the cases cited by Plaintiff deal with these "routine matters" and as such are distinguishable from the case at hand.

Plaintiff next makes the argument that the state acted with "reckless or willful and wonton conduct." Plaintiff in support of this argument cites to the portion of the email attached to the Chadwick Affidavit as Exhibit C. In that email Dr. Sommers indicates the department is having trouble meeting standards of treatment, complying with reporting and departmental guidelines. What Plaintiff omits is that this is the result of several factors including lack of funding, inadequate staffing and serving individuals who were not meant to be part of the particular program. When the correspondence is viewed in its entirety, it is clear this is an attempt to fix a problem, not an admission that something was done wrongfully with regard to Mr. Simpson. This is nothing more than an attempt to take statements out of context and twist them beyond their intended meaning. *See Chadwick Affidavit Exhibit C.*

Plaintiff next gives a list of bullet points with no citations that he claims support the conclusion that the State acted recklessly. First it should be noted this is the improper standard. In order for liability to attach, the State must act with malice or criminal intent. Malice, within the definition of the Tort Claims Act, means "actual malice" which requires a wrongful act without justification combined with ill will. *Anderson v. City of Pocatello*, 112 Idaho 176, 731

P.2d 171 (1987). As such, the Plaintiff must show there was actual ill will or intent to commit a crime in the termination of Mr. Simpson's care in order to prevail. Plaintiff cannot meet this burden. Plaintiff has offered no fact supporting a conclusion of malice or criminal intent.

Plaintiff notes that Mr. Simpson had been under state care for much of his life and had difficulty managing his medication. The fact that the State had provided care for Mr. Simpson in the past does not make it the insurer of any and all future actions of Mr. Simpson. As noted, in previous briefing, even if Mr. Simpson had been under State care at the time of the shooting liability still would not attach. *See* I.C. § 6-904A(2). Plaintiff also makes much of the fact that Mr. Simpson had been seen carrying a rifle. However, there is no evidence that Mr. Simpson illegally obtained this gun nor is there evidence he had ever improperly used any gun in the past. As such, this fact has no impact whatsoever on the State's liability and is no evidence of malice or criminal intent.

Plaintiff makes references to "CYA" memos drafted after Mr. Simpson was involved in the shooting. This is nothing more than a cheap shot and mischaracterization which adds nothing productive to the discussion of the motion before the Court.

The Plaintiff also notes that he was never given notice of the guardianship proceedings for Mr. Simpson. It is difficult to see the relevance of this fact. Plaintiff cites to nothing to indicate he had the right to be involved in such proceedings. The Idaho Code specifically sets forth who is to receive notice of a guardianship proceeding. *See* I.C. § 15-5-309. Crime victims are not identified. As such, these facts have no bearing on the issue of liability.

There is no reasonable inference to be drawn from the "facts" cited by Plaintiff that could lead a reasonable jury to find the state acted with criminal intent or malice. All the facts establish is that a former patient of Health and Welfare was involved in an unfortunate incident. There is nothing to indicate that the State knew or should have known such events would transpire.

Finally, Plaintiff argues the case before the Court is distinguishable from *Harris v. State*, 123 Idaho 295 (1993). In support of this argument Plaintiff urges this Court to find that the State should have known of the propensity for Mr. Simpson to be involved in gun violence. However, the record is devoid of any such evidence. Plaintiff's argument, as noted in the State's moving brief, if accepted leads to an absurd result. No state agency would have finality of any kind when serving or coming into contact with the public. The State cannot adequately function if it is deemed to insure against harm caused by any and all persons it may have served in the past.

5. Plaintiff's 56(f) Motion and Request for Fees are Without Merit.

Plaintiff misrepresents the status of discovery in this case. The State filed its motion for summary judgment on June 26, 2013. This was after initial responses to discovery had been served on April 2, 2013. These answers have since been supplemented in a limited manner. Contrary to the representations of Plaintiff, discovery has been in his possession for quite some time (over two months) before the instant motion was filed. It is difficult to see how the motion is "premature."

A rule 56(f) motion must be supported by an affidavit which states "that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition" the court

may then refuse the summary judgment and order further discovery. No such affidavit has been made in support of Plaintiff's motion. As such, it must be denied.

Similarly, there is no basis in law or fact for the Plaintiff's request for fees and no justification or law is cited in support thereof and accordingly the same must be denied.

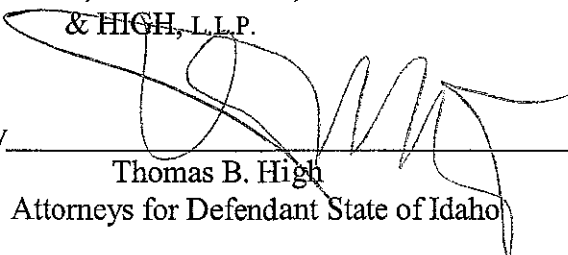
CONCLUSION

For the reasons cited above no cause of action exists against the State and as such it is requested that the court grant the State's motion for summary judgment.

DATED this 2nd day of August, 2013.

BENOIT, ALEXANDER, HARWOOD
& HIGH, L.L.P.

By


Thomas B. High
Attorneys for Defendant State of Idaho

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 2nd day of August, 2013, he caused a true and correct copy of the **REPLY TO PLAINTIFF'S MEMORANDUM IN OPPOSITION TO STATE'S MOTION FOR SUMMARY JUDGMENT** to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743
(Attorneys for Plaintiff)

Hand Delivered ☐
U.S. Mail ☒
Fax ☐
Fed. Express ☐



Thomas B. High

REPLY TO PLAINTIFF'S MEMORANDUM IN OPPOSITION TO STATE'S MOTION FOR SUMMARY
JUDGMENT - 12

2013 AUG 20 PM 1:54

BY KLL
CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT IN AND
FOR THE STATE OF IDAHO, COUNTY OF BANNOCK

RYAN M. MITCHELL,

Plaintiff,

vs.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity
and BANNOCK COUNTY, IDAHO, a
political subdivision, and DOES 1-25,

Defendant.

Case No: CV-2012-04124-OC

**ADMINISTRATIVE ORDER OF
REFERENCE**

The Honorable Stephen S. Dunn, District Judge, having disqualified himself from
presiding over this matter;

NOW THEREFORE, IT IS HEREBY ORDERED that the above entitled matter is
hereby REFERRED to the Honorable Robert C. Naftz for complete resolution.

IT IS SO ORDERED.

DATED this 16th day of August, 2013.



STEPHEN S. DUNN

Administrative District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20 day of Aug, 2013, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

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Trial Court Administrator

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DATED this 20 day of Aug, 2013.

[Signature]
Deputy Clerk

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FILED
BANNOCK COUNTY
CLERK OF THE COURT
2013 AUG 27 PM 12:55
BY [Signature]
DEPUTY CLERK

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

RYAN M. MITCHELL,

Plaintiff,

vs.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity, and
BANNOCK COUNTY, IDAHO, a political
subdivision, SUSAN SIMPSON, as
Conservator and Guardian of Gerald Durk
Simpson, and DOES 1-25,

Defendants.

Case No. CV 12-4124 OC

**MOTION TO COMPEL AGAINST
THE STATE OF IDAHO**

COMES NOW Plaintiff Ryan M. Mitchell, by and through his attorneys, and moves this Court under Rules 33, 34 and 37 of the Idaho Rules of Civil Procedure for an Order compelling the Defendant State of Idaho to fully and fairly respond to discovery in this matter.

This Motion is based upon the pleadings and documents on file with the Court, the Affidavit of Briane Nelson Mitchell filed with this Motion, and the Memorandum filed in Support of this Motion.

MOTION TO COMPEL AGAINST THE STATE OF IDAHO - 1

ORIGINAL

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FILED
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CLERK OF THE COURT
2013 AUG 27 PM 12:55
BY [Signature]
DEPUTY CLERK

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

RYAN M. MITCHELL,

Plaintiff,

vs.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity, and
BANNOCK COUNTY, IDAHO, a political
subdivision, SUSAN SIMPSON, as
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MOTION TO COMPEL AGAINST THE STATE OF IDAHO - 1

in 12/2012

Dated this 26th day of August, 2013.

Respectfully Submitted,

MAUK & BURGOYNE

By 
Briane Nelson Mitchell, of the Firm,
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of August, 2013, I caused a true and correct copy of the above and foregoing instrument to be served upon the following individuals in the manner indicated below:

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ssimpsonbv@gmail.com

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*As Conservator and Guardian of
Gerald Durk Simpson*

Thomas B. High
Bren E. Mollerup
Benoit, Alexander, Harwood & High, LLP
126 Second Avenue North
P.O. Box 366
Twin Falls, ID 83303-0366

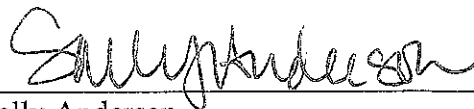
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Attorneys for Defendant Bannock County



Sally Anderson,
Assistant to Briane Nelson Mitchell

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FILED
BANNOCK COUNTY
CLERK OF THE COURT

2013 AUG 27 PM 12:55

BY [Signature]
DEPUTY CLERK

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

RYAN M. MITCHELL,

Plaintiff,

vs.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity, and
BANNOCK COUNTY, IDAHO, a political
subdivision, SUSAN SIMPSON, as
Conservator and Guardian of Gerald Durk
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Defendants.

Case No. CV 12-4124 OC

**MEMORANDUM IN SUPPORT OF
MOTION TO COMPEL AGAINST
THE STATE OF IDAHO**

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I. Introduction

The Defendant State of Idaho would like to hide its records and other information from discovery in this case. The State has identified over 6,000 pages of records that are responsive and relevant to the discovery requests in this matter, but at the same time has only produced 300 to 400 pages of material. As demonstrated herein, the State should not be allowed to hide from discovery and refuse to provide records and information relating to its involvement with the Defendant Gerald Durk Simpson, who shot and almost killed Plaintiff Ryan Mitchell on September 27, 2010. In addition, the State should be required to identify the other court proceedings that it has initiated on behalf of individuals charged with crimes, like Simpson.

II. Factual Background

The factual background of this case was previously described and documented in Plaintiff Ryan M. Mitchell's Opposition to the State's Motion for Summary Judgment which was filed with the Court on July 29, 2013. That discussion, along with the evidence that was filed in opposition to the State's summary judgment motion, is incorporated herein:

1. Simpson has a longstanding mental disease or disorder. His primary diagnosis is Schizophrenia.¹
2. For most of his adult life, Simpson has been supervised, treated, and/or assisted by the State of Idaho (Health and Welfare Department, and State Hospital South).²

¹ Idaho State Attorney General's "Petition for Appointment of Guardian/Conservator," *In re Simpson*, Idaho State District Court for Bingham County, No. CV-2012-0862, p. 2 (copy attached to Sally Anderson Affidavit that was filed with the Court on July 29, 2013 ("Anderson Affidavit") as Exhibit 1); Idaho State Medical Doctor Letter to Court, Idaho State Attorney General's "Petition for Appointment of Guardian/Conservator," *In re Simpson*, Idaho State District Court for Bingham County, No. CV-2012-0862, p. 2 (copy attached to Anderson Affidavit as Exhibit 2); Court Visitor's Report, Idaho State Attorney General's "Petition for Appointment of Guardian/Conservator," *In re Simpson*, Idaho State District Court for Bingham County, No. CV-2012-0862, p. 2 (copy attached to Anderson Affidavit as Exhibit 3).

3. Simpson has been unable to manage his medications without assistance for most of his adult life.³

4. The State stopped providing services and treatment to Simpson "on or about August 9, 2010." Prior to that time State employees "delivered medications to Simpson's home, observed him take medications, taught him shopping and took him shopping...."⁴

5. The State stopped providing support and services to Simpson because his "program was designed for short term crisis intervention rather than long term treatment."⁵

6. Less than two months after the State terminated its support and services to Simpson, on September 27, 2010, "Simpson shot the Plaintiff, Ryan Mitchell, in the back."⁶

7. The State has admitted that it was acting in a wanton, willful and reckless manner in the Summer of 2010. In a report that was prepared by a State official as part of his duties at the Pocatello State Health and Welfare office, the State admitted that:

1. We do not have enough clinical or technical support staff to meet the current demand we are experiencing
2. Because of our client-to-staff ratio we are providing less than the standard of treatment to nearly all individuals in our Programs
3. We are not complying with mandatory paperwork and billing guidelines
4. We are not complying with mandatory legal guidelines

² State Critical Incident Report, prepared by Heath Sommer (Program Lead, State Health and Welfare Adult Mental Health), Sept. 28, 2010 [day after Simpson shot Mitchell], State Document Production No. 00130 (copy attached to the Anderson Affidavit as Exhibit 4); Court Visitor's Report, Idaho State Attorney General's "Petition for Appointment of Guardian/Conservator," *In re Simpson*, Idaho State District Court for Bingham County, No. CV-2012-0862, p. 2 (copy attached to Anderson Affidavit as Exhibit 3); Idaho State Medical Doctor Letter to Court, Idaho State Attorney General's "Petition for Appointment of Guardian/Conservator," *In re Simpson*, Idaho State District Court for Bingham County, No. CV-2012-0862, p. 2 (copy attached to Anderson Affidavit as Exhibit 2).

³ Court Visitor's Report, Idaho State Attorney General's "Petition for Appointment of Guardian/Conservator," *In re Simpson*, Idaho State District Court for Bingham County, No. CV-2012-0862, p. 2 (copy attached to Anderson Affidavit as Exhibit 3).

⁴ State of Idaho Answers to Interrogatory Nos. 2 and 4 (copy attached to the Anderson Affidavit as Exhibit 5).

⁵ State of Idaho Answer to Interrogatory No. 2 (copy attached to the Anderson Affidavit as Exhibit 5).

⁶ State of Idaho Statement of Undisputed Facts No. 2.

5. We are not in compliance with our own Departmental guidelines.⁷

8. Prior to terminating the State's support and services for Simpson, two State employees "saw Simpson walking in town [i.e. Pocatello] with what appeared to be a gun." The State employees took pictures of Simpson with his gun and "posted" them for other State employees to see.⁸

9. After Simpson shot Ryan Mitchell, the State refused to help the Pocatello Police with their investigation.⁹

10. Over the course of a four day period (September 28, 2010 through October 1, 2010) immediately after Simpson shot Ryan Mitchell, State employees reviewed and/or made changes to Simpson's file or records 59 different times.¹⁰

11. On September 30, 2010 the Bannock County Prosecuting Attorney's Office filed a charge of Aggravated Battery against Simpson (I.C. §§ 18-903(a), 18-907(1)(a) & (b)) with notice that the State would seek an enhancement penalty for the use of a deadly weapon in the commission of a crime (I.C. § 18-2520):

That the said GERALD DURK SIMPSON, in the County of Bannock, State of Idaho, on or about the 27th day of September, 2010, did willfully and unlawfully use force or violence upon the person of another, Ryan Mitchell, by either the use of a deadly

⁷ The State's Document Production contained a copy of this report (Nos. 00124-00125) (copy is attached to the Anderson Affidavit as Exhibit 9); the State also attached a copy of this report to the Chadwick Affidavit as Exhibit C.

⁸ State of Idaho Answer to Interrogatory No. 7 (copy attached to the Anderson Affidavit as Exhibit 5); Photographs of Simpson with a gun, State Document Production Nos. 00173, 00174 (copies are attached to the Anderson Affidavit as Exhibit 6); State Critical Incident Report, prepared by Heath Sommer (Program Lead, State Health and Welfare Adult Mental Health), Sept. 28, 2010 [day after Simpson shot Mitchell], State Document Production No. 00130 (copy attached to the Anderson Affidavit as Exhibit 4).

⁹ Excerpts from the Pocatello Police Report were part of the State Document Production (Nos. 131, 165) (attached to the Anderson Affidavit as Exhibit 7).

¹⁰ State of Idaho's First Supplemental Answer to Interrogatory No. 11, July 15, 2013, with Access Logs (attached to the Anderson Affidavit as Exhibit 18).

weapon or instrument and/or causing great bodily harm or permanent disability or permanent disfigurement by shooting Ryan Mitchell in the back.¹¹

12. Even though the Aggravated Battery charge was still pending against Simpson, the State initiated a plan for the purpose of obtaining the release of Simpson. On May 3, 2012, the State, through the State Attorney General's Office, filed a Petition for Simpson in the District Court for Bingham County: *In re Simpson*, Idaho State District Court for Bingham County, No. CV-2012-0862. The purpose of the Petition that the State filed for Simpson was to have a Conservator/Guardian appointed for Simpson so that he could be released from State custody.¹²

13. The State never notified Mr. Mitchell that it had initiated the action in the District Court for Bingham County on behalf of Simpson. The State never notified Mr. Mitchell that it was representing Simpson in the District Court for Bingham County. The State never notified Mr. Mitchell that the proceeding in the District Court for Bingham County could result in the release of Simpson from State custody. The State never notified Mr. Mitchell that the State initiated a proceeding in the District Court for Bingham County that could result in the dismissal of the criminal charges against Simpson.¹³

14. In response to the Interrogatory that asked the State to "[i]dentify each court proceeding that the State of Idaho has filed to obtain the appointment of conservator and/or guardianship for anyone who is facing criminal charges, the State said that "since 2005 the State

¹¹ Criminal Complaint, *State v. Gerald Durk Simpson*, Idaho State District Court for Bannock County, Case No. CR-2010-15926FE (a copy of which is attached to the Anderson Affidavit as Exhibit 8).

¹² Email from Idaho State Attorney General's Office, dated April 10, 2012, produced by the State (Nos. 00008-00009) from its records (copy is attached to the Anderson Affidavit as Exhibit 10); emails discussing the release of Simpson and the dismissal of the criminal charge, dated July 13, 2010, produced by the State from its records (No. 00018) (copy attached to the Anderson Affidavit as Exhibit 11).

¹³ State of Idaho Answer to Interrogatory No. 9 (copy attached to the Anderson Affidavit as Exhibit 5); State of Idaho Response to Document Request No. 8 (copy attached to the Anderson Affidavit as Exhibit 12); State of Idaho Response to Request for Admission No. 25 (copy attached to the Anderson Affidavit as Exhibit 13).

has filed 32 conservatorship/guardianship proceedings for patients at State Hospital South or clients of Adult Mental Health in Region Six.”¹⁴

15. Defendant Bannock County has settled all claims that Mr. Mitchell filed against it in this matter. On June 12, 2013, a Stipulated Consent Decree and Final Judgment Between Ryan M. Mitchell and Bannock County was filed with the Court. The Stipulated Consent Decree and Final Judgment provided for entry of the following judgment:

IT IS HEREBY FOUND, based upon the Stipulated Consent Decree and Final Judgment between Ryan M. Mitchell and Bannock County, that there is no just reason for delay in the entry of a final judgment on the claims brought against Bannock County.

IT IS HEREBY ORDERED AND DECLARED pursuant to Idaho Code Section 10-1201, et seq., that Bannock County violated the rights of Ryan M. Mitchell under the Idaho Constitution, Article I, Section 22 and Idaho Code Section 19-5306 by failing to give Ryan M. Mitchell prior notification of (1) the criminal proceedings that resulted in the release of Gerald Durk Simpson from State custody and the dismissal of the criminal charge against Gerald Durk Simpson, and (2) the opportunity to be present and heard at any of those proceedings.

IT IS HEREBY ORDERED AND ADJUDGED that Bannock County and its officers, agents, servants, employers and attorneys are ordered to provide Ryan M. Mitchell with notice and an opportunity to be heard at any future criminal proceedings in Bannock County, if any, arising from Gerald Durk Simpson’s shooting of Mr. Mitchell.

IT IS FURTHER ORDERED that Ryan M. Mitchell and Bannock County each bear their own costs and fees with respect to each other (but this does not affect the right of either to pursue costs and fees against any of the other parties to this matter).

¹⁴ State of Idaho Answer to Interrogatory No. 17 (copy attached to Anderson Affidavit as Exhibit 5).

16. On July 26, 2013, the Court entered a default judgment against Simpson that provided that:

THEREFORE, a default is entered against Defendants (Gerald Durk Simpson and Susan Simpson as Conservator/Guardian of Gerald Durk Simpson) on the Third and Fourth Causes of Action in the First Amended Complaint.

IT IS FURTHER ORDERED that Plaintiff shall be allowed to submit evidence from which the Court can determine the amount of damages, as well as the fees and costs, that shall be awarded as part of this Default Judgment pursuant to IRCP 55(b)(2) and I.C. 5-336.

III. State Records Relating to Defendant Simpson

A. Requests and State's Response

The vast majority of the document requests asked for a straightforward production of the State records relating to Simpson:

Request No. 1: Produce all documents relating to the care and treatment that the State of Idaho has provided to Simpson.

Request No. 2: Produce all documents relating to communications that discuss the release (or potential release) of Simpson.

Request No. 3: Produce all documents relating to communications that discuss the dismissal (or potential dismissal) of criminal charges against Simpson.

Request No. 4: Produce all documents relating to the State of Idaho's decision to stop providing help or services to Simpson on or around July 1, 2010.

Request No. 5: Produce all documents relating to any effort the State of Idaho made to place Simpson in a new program during the summer of 2010.

Request No. 6: Produce all documents that discuss or relate in any way to Simpson's propensity for violence.

Request No. 7: Produce all documents that discuss or relate in any way to whether Simpson was a threat to others.

Request No. 10: Produce all documents relating to the release of Simpson from State of Idaho custody.

Request No. 15: Produce all documents relating to the State of Idaho's involvement in the Bannock County Court action against Simpson, including any documents that the State of Idaho showed to the Court.

Request No. 16: Produce all documents relating to any conservator and/or guardianship proceeding initiated on behalf of Simpson.

(A copy of the State's Responses to the Document Requests are attached to the Affidavit of Briane Nelson Mitchell ("Mitchell Affidavit") in Support of the Motion to Compel Against the State of Idaho as Exhibit D.) Unfortunately, all of these simple questions were met with the same basic boilerplate objection: "The requested documents are prohibited from disclosure under HIPPA and accompanying regulations set forth in 45 C.F.R. 164 et. seq; I.C. § 66-348; I.C. § 9-340A(2); I.C. § 9-340B(7); I.C. § 9-340C(13)."

B. Meet-and-Confer Process

In an effort to resolve this issue, Mr. Mitchell's counsel wrote to the State's attorney and made the following proposal:

Given the fact that my client was almost killed after the State terminated its supervision and services for Simpson, I think that he has an interest and a right to see the materials that the State has refused to produce. I think that there is a simple solution that would eliminate this roadblock to discovery of information relevant to this lawsuit.

I would propose that we enter into an agreement by which we agree to respect any claim of confidentiality or privacy asserted by the State, and agree that we will not use any material so

designated until we first seek permission from the Court. That would place the burden on us, but, at the same time, give the victim (i.e. Mr. Mitchell and his counsel) the opportunity to review the information that is contained in the State's records. Please let me know if this is agreeable to the State so that we can move discovery forward.

(Mitchell Affidavit, Exhibit H.)

In response, the State refused to budge, pronouncing that the "records are exempt under state and federal law." In addition, the State summarily rejected the idea of a confidentiality stipulation and order:

With regard to your request that the State provide the documents withheld and require court approval before use, is not workable. Such a procedure fails to comply with 45 CFR 164 et seq. (HIPAA). Absent a court order before disclosure, these documents will not be released.

(Mitchell Affidavit, Exhibit I.)

C. This Court Should Order the State to Produce the Withheld Records Relating to Defendant Simpson

HIPAA is **not** a barrier to production. Indeed, HIPAA provides at least three different avenues for disclosure in this type of situation.

First, HIPAA states that in response to a "discovery request" and without a court order, the records may be produced as long as Simpson has been provided with notice of the requests, an opportunity to object and reasonable efforts have been made for a qualified protective order.¹⁵ That is, basically, what has happened in this case. Through Simpson's Guardian and Conservator,

¹⁵ HIPAA provides that health information can be disclosed "in the course of any judicial or administrative proceeding" and "[i]n response to a subpoena, discovery request, or other lawful process, that is not accompanied by an order of a court..." 45 CFR § 164.512(e)(ii)(A). There must be a "good faith attempt" to give notice, "sufficient information about the litigation," and time for raising "objections." 45 CFR § 164.512(e)(iii).

Simpson has been told about the request for his records, given an opportunity to object, and told about the efforts relating to a qualified protective order. (Mitchell Affidavit, ¶ 11.)

Second, under HIPAA, the State could have made the effort to notify Simpson, give him an opportunity to object and sought a qualified protective order. The State made no effort to take the initiative, preferring instead to hide behind HIPAA.¹⁶

Third, in response to “an order of a court or administrative tribunal.” This avenue does not contain any conditions or qualifications. As long as ordered by this Court, it is okay under HIPAA for Simpson’s records to be produced.¹⁷

The State Public Disclosure Law is also **not** a barrier to production. Indeed, that law clearly has no application whatsoever to discovery in this case:

Nothing contained in sections 9-337 through 9-348, Idaho Code, shall limit the availability of documents and records for discovery in the normal course of judicial or administrative adjudicatory proceedings, subject to the law and rules of evidence and of discovery governing such proceedings.

I.C. § 9-343(3). Moreover, the Idaho Public Records Act and the exemptions cited by the State cannot be used to “substitute or supplant discovery procedures in other federal, civil or administrative proceedings.” *Id.*

¹⁶ HIPAA explains:

Notwithstanding paragraph (3)(1)(ii) of this section, a covered entity may disclose protected health information in response to lawful process described in paragraph (e)(1)(iii) of this section without receiving satisfactory assurance under paragraph (e)(1)(ii)(A) or (B) of this section, if the covered entity makes reasonable efforts to provide notice to the individual sufficient to meet the requirements of paragraph (e)(1)(iii) of this section or to seek a qualified protective order sufficient to meet the requirements of paragraph (e)(1)(iv) of this section.

45 CFR § 164.512(e)(vi).

¹⁷ See 45 CFR 164.512(e)(i) (“In response to an order of a court or administrative tribunal, provided that the covered entity discloses only the protected health information expressly authorized by such order...”).

The State did not have substantial justification for its use of the Idaho Public Records Act (i.e. I.C. §§ 9-340A(2), 9-340B(7) & 9-340C(13)) given the clear mandate of Idaho Code Section 9-343(3). Moreover, the State's objections also ignored the State Attorney General's own instructions:

Question No. 31: When a public agency or public official is a party to a proceeding governed by the rules of discovery, may another party to the litigation use the public records law to obtain records instead of complying with the discovery process?

Answer: No. The public records law is not 'available to supplement, augment, substitute or supplant discovery procedures' in any criminal appeal, post-conviction civil action, federal or state civil action, or other administrative process governed by the rules of discovery.

Idaho Public Records Law Manual, Office of the Attorney General, October 2012, p. 17.

The State's occasional reference to Idaho Code Section 66-348 also cannot justify the State's position because that statute incorporates the disclosure rules of the Idaho Public Records Act ("subject to disclosure according to chapter 3, title 9, Idaho Code"). And, as already noted, that Act clearly provides that such records are subject to "discovery in the normal course of judicial or administrative adjudicatory proceedings." I.C. § 9-343(3). Furthermore, Idaho Code Section 66-348 also gives the courts the authority to make a "determination that disclosure is necessary and that failure to make disclosure would be contrary to the public interest." I.C. § 66-348(3).

The State's refusal to produce the Simpson records and its efforts to protect Simpson are also inconsistent with its obligations to Mr. Mitchell as a victim of a violent crime. In theory, the State has a strong public policy that supports the interests of crime victims. This policy is reflected

in the Idaho State Constitution.¹⁸ The policy is further reflected in the Victim Rights Statute.¹⁹ The Idaho State Attorney General's Office also supposedly places a special emphasis on its avowed interest in protecting the rights of crime victims, like Mr. Mitchell.²⁰

¹⁸ Article I, Section 22 of the Idaho Constitution, provides that a crime victim, like Mr. Mitchell, has a right:

- (1) To be treated with fairness, respect, dignity and privacy throughout the criminal justice process.
- (2) To timely disposition of the case.
- (3) To prior notification of trial court, appellate and parole proceedings and, upon request, to information about the sentence, incarceration and release of the defendant.
- (4) To be present at all criminal justice proceedings.
- (5) To communicate with the prosecution.
- (6) To be heard, upon request, at all criminal justice proceedings considering a plea of guilty, sentencing, incarceration or release of the defendant, unless manifest injustice would result.
- (7) To restitution, as provided by law, from the person committing the offense that caused the victim's loss.

¹⁹ The Victim Rights Statute states that:

- (1) Each victim of a criminal or juvenile offense shall be:
 - (a) Treated with fairness, respect, dignity and privacy throughout the criminal justice process;
 - (b) Permitted to be present at all criminal justice proceedings or juvenile proceedings including probation proceedings;
 - (c) Entitled to a timely disposition of the case;
 - (d) Given prior notification of trial court, appellate, probation and parole proceedings...;
 - (e) Heard, upon request, at all criminal justice proceedings considering a plea of guilty, sentencing, incarceration, placing on probation or release...;
 - (f) Afforded the opportunity to communicate with the prosecution...;
 - (g) Allowed to refuse an interview...;
 - (h) Consulted by the presentence investigator...;
 - (i) Assured the expeditious return of any stolen or other personal property by law enforcement agencies when no longer needed as evidence;
 - (j) Notified whenever the defendant or suspect is released....

(I.C. § 19-5306.)

²⁰ The Attorney General's website states that each victim of a criminal offense shall be:

- Treated with fairness, respect, dignity and privacy throughout the criminal justice process
- Permitted to be present at all court proceedings
- Entitled to a timely disposition of the case
- Given prior notification of proceedings and, upon request, given information about the sentence, incarceration, placing on probation or release of the defendant
- Heard, upon request, at all criminal justice proceedings considering a plea of guilty, sentencing, incarceration, placing on probation or release of the defendant
- Afforded the opportunity to provide a victim impact statement
- Notified whenever the defendant or suspect is released or escapes from custody

Finally, the State has already publicly released some of the documents on its Privilege Log. For example, eight documents that were filed in the Conservator/Guardian proceedings in the District Court of the Seventh Judicial District in and for Bingham County (*In re Simpson*, Idaho State District Court for Bingham County, No. CV-2012-0862) were withheld from production according to the State's Privilege Log. (Mitchell Affidavit, Exhibit G, pp. 4-5.) However, those same eight documents are available by contacting the Bingham County Clerk to look at that Court file. (Mitchell Affidavit, ¶ 12.) This raises serious issues not only regarding the State's motivation, but also with respect to whether the State has waived the objections that it is using to hide material from discovery.²¹

IV. The State's Communications and Involvement With the Criminal Case Against Simpson

Interrogatory No. 16 asked the State to "[d]escribe any communications with the Bannock County Court by the Idaho Attorney General's Office or the Idaho Department of Health and Welfare relating to the dismissal of criminal charges against Simpson or his release from custody." (Mitchell Affidavit, Exhibit E.) The State responded with its standard boilerplate objection:

Objection. The requested documents are prohibited from disclosure under HIPPA and accompanying regulation set forth in 45 C.F.R. 164 et. seq; I.C. § 66-348; I.C. § 9-340A(2); I.C. § 9-340B(7); I.C. § 9-340C(13).

(Mitchell Affidavit, Exhibit E.) The State also referred to its answers to Interrogatory Nos. 14 and 15 even though those answers said nothing about the State's communications with the Bannock County Court.

²¹ The State has said that it would provide a revised Privilege Log (Exhibit I) which will hopefully disclose all of the recipients of the withheld material. At this point, and without that information, it is impossible to determine how many other instances of waiver by the State have occurred.

The meet-and-confer letter to the State pointed out that:

Interrogatory No. 16: This question asks the State to describe its communications with the District Court for Bannock County relating to the dismissal of Simpson's criminal charges or his release from custody. The Courts of this State are open to the public. Whatever communications occurred cannot be hidden behind a barrage of objections.

(Mitchell Affidavit, Exhibit H.) In response, the State made clear that it believed that its communications with the Court should remain secret:

Interrogatory No. 16 – again, not all guardianship filings are public. The State is aware of the public's right to access the court system. However, for certain proceeding, not all records are public. As such, the State stands behind its objections.

(Mitchell Affidavit, Exhibit I.)

The State should be ordered to answer Interrogatory No. 16. In this case, the State communicated directly with the Court that was handling the criminal case against Simpson. Mr. Mitchell, the victim of Simpson's crime, was never told that the State had intervened and/or appeared in the criminal case.²² The State's generic references to HIPAA and the State Public Records Act do not support the shroud of secrecy that the State has placed over its communications with the Bannock County Court "relating to the dismissal of criminal charges against Simpson or his release from custody."

V. State's Representation of Other Individuals Facing Criminal Charges

Interrogatory No. 17 asked the State to "[i]dentify each court proceeding that the State of Idaho has filed to obtain the appointment of conservator and/or guardianship for anyone who is facing criminal charges." (Mitchell Affidavit, Exhibit E.) In response, the State admitted that it had

²² The State has identified at least four documents that it submitted to Judge Rick Carnaroli who was presiding over the pretrial proceedings in the criminal case against Simpson. (Mitchell Affidavit, Exhibit G, p. 6.)

done so on 32 occasions since 2005 for patients at State Hospital South or clients of Adult Mental Health in Region Six.²³

The meet-and-confer letter to the State explained that:

The State was asked to identify each court proceeding it “has filed to obtain the appointment of [a] conservator and/or guardianship for anyone who is facing criminal charges.” Again, the State cannot hide behind third party confidentiality concerns. The State should identify the 32 instances where this has occurred, given the fact that the criminal proceedings should all have been a matter of public record. In addition, the State should not limit its response to State Hospital South and Region Six.

(Mitchell Affidavit, Exhibit H.) In response, the State said that:

Interrogatory No. 17 – first, it must be noted that it is difficult to see how this Interrogatory is reasonably calculated to lead to admissible evidence. The State has amended its response to reflect the same. Statewide guardianship proceedings have no relevance to the case at hand.

(Mitchell Affidavit, Exhibit I.)

As an initial matter, there is no merit to the State’s assertion of HIPAA and Idaho Public Records concerns. The interrogatory is only asking the State to identify the “court proceedings.” Presumably, the State has no interest in maintaining the secrecy of court proceedings that it has initiated for the benefit of individuals facing criminal charges. In fact, the action that the State filed on behalf of Simpson in Bingham County District Court, in which the State Attorney

²³ The full response by the State provided as follows:

Objection. The requested documents are prohibited from disclosure under HIPAA and accompanying regulation set forth in 45 C.F.R. 164 et. seq; I.C. § 66-348; I.C. § 9-340A(2); I.C. § 9-340B(7); I.C. § 9-340C(13). Without waiving the same, Defendant states that since 2005 the State has filed 32 conservatorship/guardianship proceedings for patients at State Hospital South or clients of Adult Mental Health in Region Six.

(Mitchell Affidavit, Exhibit E.)

MEMORANDUM IN SUPPORT OF MOTION TO COMPEL AGAINST THE STATE OF IDAHO - 14

General apparently served as Simpson's attorney, involved court filings that were open to the public.

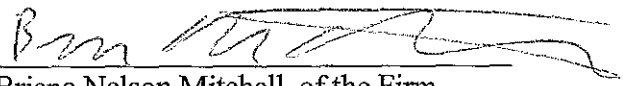
Furthermore, evidence of similar incidents is routinely admitted into evidence. *Sliman v. Aluminum Co. of America*, 112 Idaho 277, 284 (1986). As a result, identification of the other cases certainly "appears reasonably calculated to lead to the discovery of admissible evidence." IRCP 26(b)(1).

VI. Conclusion

Based upon the foregoing, Mr. Mitchell requests that the Court enter an order requiring the State to fully respond and produce all documents and materials responsive to Document Request Nos. 1, 2, 3, 4, 5, 6, 7, 10, 15 and 16, as well as Interrogatory Nos. 16 and 17.

Dated this 26th day of August, 2013.

MAUK & BURGOYNE

By 
Briane Nelson Mitchell, of the Firm,
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of August, 2013, I caused a true and correct copy of the above and foregoing instrument to be served upon the following individuals in the manner indicated below:

Susan Simpson
765 Channing Ave.
Palo Alto, CA 94301
ssimpsonbv@gmail.com

☒ U.S. Mail
☐ Facsimile
☒ Email
☐ Hand Delivery

*As Conservator and Guardian of
Gerald Durk Simpson*

Thomas B. High
Bren E. Mollerup
Benoit, Alexander, Harwood & High, LLP
126 Second Avenue North
P.O. Box 366
Twin Falls, ID 83303-0366

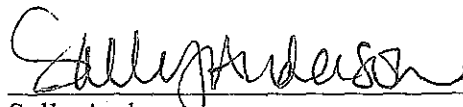
☒ U.S. Mail
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☐ Email
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Attorneys for Defendant State of Idaho

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☐ Facsimile
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BANNOCK COUNTY
CLERK OF THE COURT

2013 AUG 27 PM 12:55

BY
DEPUTY CLERK

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

RYAN M. MITCHELL,

Plaintiff,

vs.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity, and
BANNOCK COUNTY, IDAHO, a political
subdivision, SUSAN SIMPSON, as
Conservator and Guardian of Gerald Durk
Simpson, and DOES 1-25,

Defendants.

Case No. CV 12-4124 OC

**AFFIDAVIT OF BRIANE NELSON
MITCHELL IN SUPPORT OF
MOTION TO COMPEL DISCOVERY
AGAINST THE DEFENDANT
STATE OF IDAHO**

STATE OF IDAHO)

: ss.

County of Ada)

I, Briane Nelson Mitchell, being first duly sworn upon oath, depose and say:

1. I am one of the attorneys for Plaintiff, Ryan Mitchell, and have personal knowledge of the facts set forth in this Affidavit.

2. On February 5, 2013, the State of Idaho was served with 1) Plaintiff's First Set of Requests for Admission to the State of Idaho, 2) Plaintiff's First Set of Document Requests to

**AFFIDAVIT OF BRIANE NELSON MITCHELL IN SUPPORT OF MOTION TO COMPEL DISCOVERY
AGAINST THE DEFENDANT STATE OF IDAHO - 1**

the State of Idaho, and 3) Plaintiff's First Set of Interrogatories to the State of Idaho. A true and correct copy of the proof of service is attached as Exhibit A.

3. On March 20, 2013, I sent an email to the State's attorneys:

The State of Idaho is in default in responding to the discovery in this matter. ... The State has not provided any responses to the Document Requests or the Interrogatories.

Are you available to have a good faith conference about the State of Idaho's discovery default on either March 21 or the morning of March 22? I was hoping that the State of Idaho would answer the discovery without court action.

A true and correct copy of my March 20, 2013 email is attached hereto as Exhibit B.

4. After having the IRCP 37 meet-and-confer, I sent an email to the State's attorney on March 22, 2013:

I am sending this email to confirm the key aspects of our Rule 37 telephone conference dealing with the fact that the State of Idaho had not responded to 1) the First Set of Interrogatories, and 2) the First Set of Document Request (both of which were served on February 5, 2013). We agreed to give the State another two weeks based upon your representation that the State would provide substantial responses and documents. We look forward to receiving the responses and documents on or before April 5, 2013. Thank you.

A true and correct copy of my March 22, 2013 email is attached hereto as Exhibit C.

5. On April 5, 2013, my office received the State's Responses to Plaintiff's First Set of Document Requests. A true and correct copy of the State's Responses is attached hereto as Exhibit D.

6. On April 5, 2013, my office received the State's Answers to Plaintiff's First Set of Interrogatories. A true and correct copy of the State's Answers is attached hereto as Exhibit E.

**AFFIDAVIT OF BRIANE NELSON MITCHELL IN SUPPORT OF MOTION TO COMPEL DISCOVERY
AGAINST THE DEFENDANT STATE OF IDAHO - 2**

7. On or around April 5, 2013, my office received the State's Privilege and Statutory Exemption Log. A true and complete copy of the State's April Privilege Log is attached hereto as Exhibit F. The State's April Privilege Log indicated that the State was withholding more than 2100 pages of responsive documents.

8. On July 16, 2013, my office received a new Privilege and Statutory Exemption Log from the State. A true and correct copy of the State's July Privilege Log is attached hereto as Exhibit G. The State's July Privilege Log indicated that the State was withholding more than 5700 pages of responsive documents.

9. On July 23, 2013, I sent a detailed IRCP 37 meet and confer letter to the State's attorneys that addressed the deficiencies in the State's discovery responses. A true and correct copy of that letter is attached hereto as Exhibit H. In that letter, I explained:

I am sending this letter to address our concerns relating to the State of Idaho's inappropriate and inadequate responses, and/or failure to respond to Plaintiff's Interrogatories and Document Requests. I would request that we set a time during the week of July 29, 2013 to meet and confer over these particular issues and see if we can reach some agreement. If we cannot, it is my intent to file a motion to compel.

(Exhibit H.)

10. On or around July 29, 2013, I received a letter from the State's attorney responding to my July 23, 2013 IRCP 37 meet and confer letter. A true and correct copy of the State's July 29, 2013 letter is attached hereto as Exhibit I. In that letter, the State's attorney stated:

I am in receipt of your July 23rd letter requesting a meet and confer. Please consider this letter our response to your concerns regarding the discovery issues you have raised. It is our position that a teleconference is not necessary and will not be productive.

**AFFIDAVIT OF BRIANE NELSON MITCHELL IN SUPPORT OF MOTION TO COMPEL DISCOVERY
AGAINST THE DEFENDANT STATE OF IDAHO - 3**

(Exhibit I.) The State rejected the proposal of a stipulated protective order. The State's attorney stated that "[a]bsent a court order before disclosure, these documents [i.e. the 5700 pages] will not be released." (Exhibit I.)

11. I have spoken by telephone with Susan Simpson, the Court-appointed Guardian and Conservator for Defendant Gerald Durk Simpson. I have asked for her cooperation and consent to the production of the State's records involving her brother. She has not refused, but she has also not agreed to cooperate. I sent a letter to Susan Simpson on August 6, 2013 in which I made one last effort to obtain her cooperation. A true and correct copy of my August 6, 2013 letter is attached hereto as Exhibit J. In that letter I explained:

We have talked before about our need to have the opportunity to review the State's records relating to your brother, Gerald Durk Simpson. Unfortunately, you have not responded to our request that you agree to the production so that the State cannot shield the records from discovery.

Attached to this letter is a copy of the State's current Privilege Log showing that it has withheld approximately 5,700 pages of relevant material, ostensibly based upon its desire to protect the privacy rights of your brother.

With this letter, I wanted to make one last effort before we are forced to file a Motion to Compel against the State. As I explained to you in an earlier email:

The State continues to refuse to show Durk's records to us. In fact, as you will see in our papers opposing the State's motion, the State has only produced around 2-300 pages of documents, while withholding more than 5700 pages (that we know about) based upon privacy and confidentiality objections. We have been trying to get around this roadblock. As a result, we have proposed the following solution to the State:

I would propose that we enter into an agreement by which we agree to respect any claim of confidentiality or privacy asserted by the State, and agree that we will not use any material so designated until we first seek permission from the Court. That would place the burden on us, but, at the same time, give the victim (i.e. Mr. Mitchell and his counsel) the opportunity to review the information that is contained in the State's records. Please let me know if this is agreeable to the State so that we can move discovery forward.

Please let us know if you have any objections to the agreement that we proposed to the State. If you do have any objections to the release of the records, please notify us and the Court (the Court's address is 624 E Center, Rm. 220, Pocatello, ID 83201 and any correspondence to the Court should include reference to this case, *Ryan Mitchell v. Gerald Durk Simpson, et al.*, Bannock County Case No. CV 12-4124 OC).

(Exhibit J.)

12. Some of the documents that the State refused to produce and listed on its Privilege Log, have actually been publicly filed in other court proceedings when it suits the State's fancy. For example, at least eight documents included on its Privilege Log (Exhibit G), are available to the public for copying at the Bingham County Courthouse from the file of *In re Simpson*, District Court of the Seventh Judicial District of the State of Idaho in and for the County of Bingham, No. CV 2012-0862:

- | | | |
|----|--|-------------------|
| 1) | Visitor's Report in Case No. CV-2012-0862 | State No. 343-346 |
| 2) | Letter from Chad L. Murdock | State No. 347-349 |
| 3) | Report of Guardian Ad Litem in case no CV-1012-0862 Bingham County | State No. 350-352 |
| 4) | Order Appointing Counsel, Visitor and | State No. 355-357 |

**AFFIDAVIT OF BRIANE NELSON MITCHELL IN SUPPORT OF MOTION TO COMPEL DISCOVERY
AGAINST THE DEFENDANT STATE OF IDAHO - 5**

Physician Case No. CV 1012-0862,
Bingham County

- 5) Notice of Hearing on Petition for Appointment of Guardian/ Conservator Case No. CV-2012-0862 State No. 358-359
- 6) Petition for Guardianship case no. CV 2012-0862, Bingham County State No. 360-363
- 7) Visitor's Report in Case No. CV-2012-0862 State No. 476-479
- 8) Report of Guardian Ad Litem in case no CV-1012-0862 Bingham County State No. 484-485

The inconsistency in the State's position was raised in the meet-and-confer letter:

There are several documents that the State filed with the District Court for Bingham County that are part of the record (e.g., the State's Petition, Dr. Murdock's letter, the Visitor's Report, etc.) and available to the public - - *In re Gerald Durk Simpson*, Idaho State District Court for Bingham County, Case No. CV-2012-0000862. Nevertheless, the State has withheld these very same documents from production in this lawsuit.

(Exhibit H.) The State, however, has chosen to ignore its inconsistent position, and there is no way of knowing how many other documents on the State's Privilege Log have previously been publicly released by the State.

13. The State has refused to produce the documents that it provided to the Court on Simpson's behalf in the criminal case against Simpson:

The State provided information and reports to Judge Carnaroli who was presiding over the criminal case against Simpson - - *State of Idaho v. Gerald Durk Simpson*, Idaho State District Court for Bannock County, Case No. CR-2010-0015926-FE. Mr. Mitchell, the victim of Simpson's violent crime, should be entitled to obtain copies of any materials that the State provided to the Court in the criminal case that was supposed to have been

brought to protect the public as well as vindicate Mr. Mitchell's rights as a crime victim.

(Exhibit H.) The State has identified at least four such documents on its Privilege Log (State Nos. 403-406, 407-409, 410-412, 413-415). (Exhibit G.)

14. The State's Privilege Log does not identify the recipients of the documents that are listed on the Privilege Log:

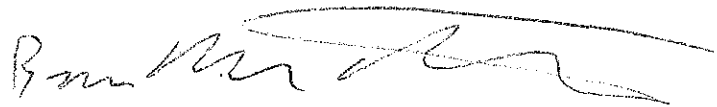
As part of the Privilege Log, the State was supposed to have identified all of the recipient(s) of each document withheld on privilege grounds. Unfortunately, rather than identifying the recipient(s), the State has instead lumped the author and recipient categories together and then used intentionally vague terms such as 'N/A,' 'Various' and 'Attorney General's Staff.'

(Exhibit H.) In response, on July 29, 2013, the State said:

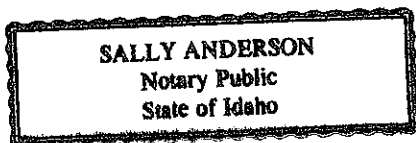
We are currently working on an amended Privilege Log. However, this will take some time.

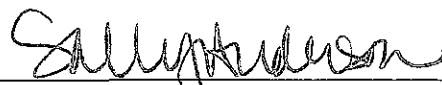
(Exhibit I.)

Dated this 26th day of August, 2013.


Briane Nelson Mitchell

SUBSCRIBED AND SWORN to before me, the undersigned Notary in and for said State, this 26th day of August, 2013.




NOTARY PUBLIC For Idaho
Residing at Boise, therein.
My Commission expires 4-24-18

AFFIDAVIT OF BRIANE NELSON MITCHELL IN SUPPORT OF MOTION TO COMPEL DISCOVERY
AGAINST THE DEFENDANT STATE OF IDAHO - 7

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of August, 2013, I caused a true and correct copy of the above and foregoing instrument to be served upon the following individuals in the manner indicated below:

Susan Simpson
765 Channing Ave.
Palo Alto, CA 94301
ssimpsonbv@gmail.com

☒ U.S. Mail
☐ Facsimile
☒ Email
☐ Hand Delivery

*As Conservator and Guardian of
Gerald Durk Simpson*

Thomas B. High
Bren E. Mollerup
Benoit, Alexander, Harwood & High, LLP
126 Second Avenue North
P.O. Box 366
Twin Falls, ID 83303-0366

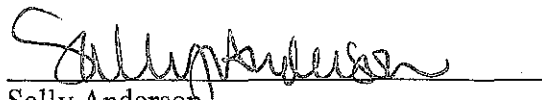
☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

Attorneys for Defendant State of Idaho

Ian N. Service
Bannock County Prosecutor's Office
624 E Center
P.O. Box P
Pocatello, ID 83201

☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

Attorneys for Defendant Bannock County


Sally Anderson,
Assistant to Briane Nelson Mitchell

COPY

WILLIAM L. MAUK (ISB #1825)
BRIANE NELSON MITCHELL (ISB #2346)
MAUK & BURGOYNE
515 South 6th Street
Post Office Box 1743
Boise, Idaho 83701-1743
Telephone: (208) 345-2654
Facsimile (208) 345-3319
nels@maukburgoyne.com

FILED
BANNOCK COUNTY
CLERK OF THE COURT
13 FEB -8 PM 12:49
BY
DEPUTY

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

RYAN M. MITCHELL,

Plaintiff,

vs.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity, and
BANNOCK COUNTY, IDAHO, a political
subdivision, SUSAN SIMPSON, as
Conservator and Guardian of Gerald Durk
Simpson, and DOES 1-25,

Defendants.

Case No. CV 12-4124 OC

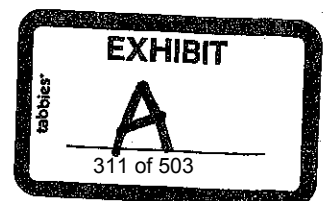
NOTICE OF SERVICE

PLEASE TAKE NOTICE that, Pursuant to Rule 33(a)(5) [and 34(d)], I.R.C.P., on the 5th
day of February, 2013, the following discovery documents were served on Defendant State of
Idaho:

- Plaintiff's First Set of Requests for Admission Pursuant to I.R.C.P. 36 To Defendant State of Idaho;
- Plaintiff's First Set of Document Requests to the State of Idaho; and
- Plaintiff's First Set of Interrogatories to the State of Idaho.

The discovery was served by hand delivery to the following:

NOTICE OF SERVICE - 1

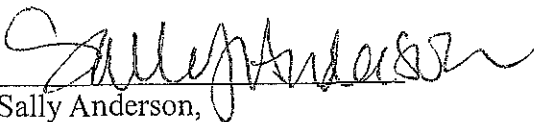


Ben Ysursa, Secretary of State
State of Idaho
700 W. Jefferson, Room E205
Boise, ID 83720

Lawrence G. Wasden
Attorney General
State of Idaho
P.O. Box 83720
Boise, ID 83720-0010

DATED this 6th day of February, 2013.

MAUK & BURGOYNE

By 
Sally Anderson,
Assistant to Briane Nelson Mitchell

CERTIFICATE OF SERVICE

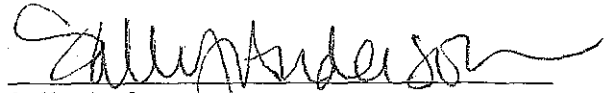
I HEREBY CERTIFY that on this 6th day of February, 2013, I caused a true and correct copy of the above and foregoing instrument to be served upon the following individuals in the manner indicated below:

Ben Ysursa, Secretary of State
State of Idaho
700 W. Jefferson, Room E205
Boise, ID 83720

☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

Brian Kane
Idaho Attorney General's Office
P.O. Box 83720
Boise, ID 83720-0010

☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery


Sally Anderson,
Assistant to Briane Nelson Mitchell

sally@maukburgoyne.com

From: Nels Mitchell
Sent: Wednesday, March 20, 2013 2:40 PM
To: high@benoitlaw.com; mollerup@benoitlaw.com
Cc: billmauk@maukburgoyne.com; sally@maukburgoyne.com
Subject: Mitchell v. Simpson, State of Idaho & Bannock County

Messrs. High & Mollerup:

The State of Idaho is in default in responding to the discovery in this matter. On February 5, 2013, the State of Idaho was served with 1) Plaintiff's First Set of Requests for Admission to the State of Idaho, 2) Plaintiff's First Set of Document Requests to the State of Idaho, and 3) Plaintiff's First Set of Interrogatories to the State of Idaho. The State has not provided any responses to the Document Requests or the Interrogatories.

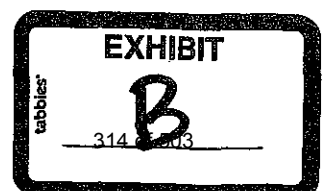
Are you available to have a good faith conference about the State of Idaho's discovery default on either March 21 or the morning of March 22? I was hoping that the State of Idaho would answer the discovery without court action.

I look forward to hearing from you.

Nels

Briane Nelson Mitchell
Mauk & Burgoyne
515 S. 6th Street
P.O. Box 1743
Boise, ID 83701-1743
T: (208) 345-2654
F: (208) 345-3319
nels@maukburgoyne.com

CONFIDENTIALITY NOTICE: This e-mail communication and any attachments may contain confidential and privileged information for the use of the designated recipients named. If you are not the intended recipient, you are hereby notified that you have received this communication in error and that any review, disclosure, dissemination, distribution or copying of it or its contents is prohibited. If you have received this communication in error, please destroy all copies of this communication and any attachments.



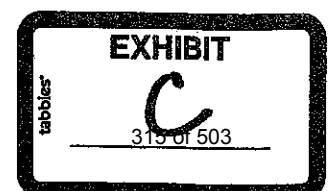
sally@maukburgoyne.com

From: Nels Mitchell
Sent: Friday, March 22, 2013 11:21 AM
To: mollerup@benoitlaw.com
Cc: billmauk@maukburgoyne.com; sally@maukburgoyne.com
Subject: State of Idaho's Failure to Respond

Bren

I am sending this email to confirm the key aspects of our Rule 37 telephone conference dealing with the fact that the State of Idaho had not responded to 1) the First Set of Interrogatories, and 2) the First Set of Document Request (both of which were served on February 5, 2013). We agreed to give the State another two weeks based upon your representation that the State would provide substantial responses and documents. We look forward to receiving the responses and documents on or before April 5, 2013. Thank you.

Nels



Thomas B. High, ISB No. 2430
Bren E. Mollerup, ISB No. 7959
BENOIT, ALEXANDER,
HARWOOD & HIGH, L.L.P.
126 Second Avenue North
P.O. Box 366
Twin Falls, Idaho 83303-0366
Telephone: (208) 733-5463
Fax: (208) 734-1438
Email: high@benoitlaw.com
Email: mollerup@benoitlaw.com
Attorneys for Defendant State of Idaho
(16105\Discovery\Res to Plain 1st Set of Document Requests\TBH\ka)

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RYAN M. MITCHELL,

Plaintiff,

v.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity,
and BANNOCK COUNTY, IDAHO, a
political subdivision, SUSAN SIMPSON, as
Conservator and Guardian of Gerald Durk
Simpson, and DOES 1-25,

Defendants.

Case No. CV-12-4124-OC

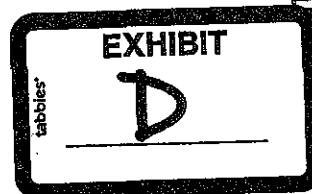
**RESPONSES TO PLAINTIFF'S
FIRST SET OF DOCUMENT
REQUESTS TO DEFENDANT
STATE OF IDAHO**

COMES NOW the Defendant, STATE OF IDAHO (hereinafter "State"), by and through its
counsel of record, and responds to Plaintiff's First Set of Document Requests to Defendant State of
Idaho as follows:

RESPONSES TO PLAINTIFF'S FIRST SET OF DOCUMENT
REQUESTS TO DEFENDANT STATE OF IDAHO - 1

MAUK & BURGOYNE

APR 05 2013



RECEIVED

REQUEST FOR PRODUCTION NO. 1: Produce all documents relating to the care and treatment that the State of Idaho has provided to Simpson.

RESPONSE NO. 1: Objection. The requested documents are prohibited from disclosure under HIPPA and accompanying regulation set forth in 45 C.F.R. 164 et. seq; I.C. § 66-348; I.C. § 9-340A(2); I.C. § 9-340B(7); I.C. § 9-340C(13). Please see privilege log. However, without waiving the same, to the extent they are responsive, please see documents attached as Exhibit "A."

REQUEST FOR PRODUCTION NO. 2: Produce all documents relating to communications that discuss the release (or potential release) of Simpson.

RESPONSE NO. 2: Objection. The requested documents are prohibited from disclosure under HIPPA and accompanying regulation set forth in 45 C.F.R. 164 et. seq; I.C. § 66-348; I.C. § 9-340A(2); I.C. § 9-340B(7); I.C. § 9-340C(13) and work product and attorney client privilege doctrines. See privilege log. However, without waiving the same, to the extent they are responsive; please see documents attached as Exhibit "A."

REQUEST FOR PRODUCTION NO. 3: Produce all documents relating to communications that discuss the dismissal (or potential dismissal) of criminal charges against Simpson.

RESPONSE NO. 3: Objection. The requested documents are prohibited from disclosure under HIPPA and accompanying regulation set forth in 45 C.F.R. 164 et. seq; I.C. § 66-348; I.C. § 9-340A(2); I.C. § 9-340B(7); I.C. § 9-340C(13) and work product and attorney client privilege doctrines. Without waiving the same, and to the extent they are responsive, please see attached documents.

RESPONSES TO PLAINTIFF'S FIRST SET OF DOCUMENT
REQUESTS TO DEFENDANT STATE OF IDAHO - 2

REQUEST FOR PRODUCTION NO. 4: Produce all documents relating to the State of Idaho's decision to stop providing help or services to Simpson on or around July 1, 2010.

RESPONSE NO. 4: Objection. The requested documents are prohibited from disclosure under HIPPA and accompanying regulation set forth in 45 C.F.R. 164 et. seq; I.C. § 66-348; I.C. § 9-340A(2); I.C. § 9-340B(7); I.C. § 9-340C(13) and work product and attorney client privilege doctrines. Please see privilege log. However, without waiving the same, please see the documents attached as exhibit "B" which are not subject to the above objection.

REQUEST FOR PRODUCTION NO. 5: Produce all documents relating to any effort the State of Idaho made to place Simpson in a new program during the summer of 2010.

RESPONSE NO. 5: Objection. The requested documents are prohibited from disclosure under HIPPA and accompanying regulation set forth in 45 C.F.R. 164 et. seq; I.C. § 66-348; I.C. § 9-340A(2); I.C. § 9-340B(7); I.C. § 9-340C(13). Please see privilege log. Additionally the term "Place" in this Request suggests that the State had the authority to involuntarily put Simpson into a program. The State had no such authority since Simpson was not in its custody. All individuals terminated from the program were referred to providers who could follow up on their care.

REQUEST FOR PRODUCTION NO. 6: Produce all documents that discuss or relate in any way to Simpson's propensity for violence.

RESPONSE NO. 6: . Objection. The requested documents are prohibited from disclosure under HIPPA and accompanying regulation set forth in 45 C.F.R. 164 et. seq; I.C. §

RESPONSES TO PLAINTIFF'S FIRST SET OF DOCUMENT
REQUESTS TO DEFENDANT STATE OF IDAHO - 3

66-348; I.C. § 9-340A(2); I.C. § 9-340B(7); I.C. § 9-340C(13) and work product and attorney client privilege doctrines. Please see privilege log.

REQUEST FOR PRODUCTION NO. 7: Produce all documents that discuss or relate in any way to whether Simpson was a threat to others.

RESPONSE NO. 7: Objection. The requested documents are prohibited from disclosure under HIPPA and accompanying regulation set forth in 45 C.F.R. 164 et. seq; I.C. § 66-348; I.C. § 9-340A(2); I.C. § 9-340B(7); I.C. § 9-340C(13). Please see privilege log.

REQUEST FOR PRODUCTION NO. 8: Produce all documents relating to the victim rights that the State of Idaho provided to Mr. Mitchell in connection with the Bingham County Court action that the State of Idaho initiated in 2012.

RESPONSE NO. 8: Objection. This Request assumes that the state was under a legal requirement provide documentation to Mr. Mitchell. Without waiving the objection, the State is not aware of any such documents. Should such documentation be discovered this Response will be supplemented.

REQUEST FOR PRODUCTION NO. 9: Produce all documents relating to the State of Idaho's investigation of the shooting of Mr. Mitchell on September 27, 2010.

RESPONSE NO. 9: Please see the police reports and the Critical Incident Report prepared by Dr. Heath Sommer on September 28, 2010. These documents are attached hereto as Exhibit "C."

REQUEST FOR PRODUCTION NO. 10: Produce all documents relating to the release of Simpson from State of Idaho custody.

RESPONSE NO. 10: Objection. The requested documents are prohibited from
RESPONSES TO PLAINTIFF'S FIRST SET OF DOCUMENT
REQUESTS TO DEFENDANT STATE OF IDAHO - 4

disclosure under HIPPA and accompanying regulation set forth in 45 C.F.R. 164 et. seq; I.C. § 66-348; I.C. § 9-340A(2); I.C. § 9-340B(7); I.C. § 9-340C(13). However, without waiving the same, and to the extent they are responsive, please see documents contained in Exhibit "A."

REQUEST FOR PRODUCTION NO. 11: Produce all documents relating to the dismissal of the criminal charges against Simpson.

RESPONSE NO. 11: Please see documents contained in Exhibit "A."

REQUEST FOR PRODUCTION NO. 12: Produce all documents relating to Simpson's acquisition, possession or use of guns.

RESPONSE NO. 12: The State is not in possession of documents related to Simpson's acquisition or use of guns. The State did procure pictures of Simpson carrying what appears to be a gun. These pictures are attached as Exhibit "D."

REQUEST FOR PRODUCTION NO. 13: Produce all documents relating to any arrests of, or criminal charges brought against, Simpson prior to September 28, 2010. (The time limitation from Instruction No.7 does not apply to this request.)

RESPONSE NO. 13: Please see the attached printout of cases from the Idaho Repository attached as Exhibit "E."

REQUEST FOR PRODUCTION NO. 14: Produce all documents that the State of Idaho provided to Simpson or his attorney in response to subpoenas and discovery requests made in the Bannock County Court action against Simpson.

RESPONSE NO. 14: Objection. The requested documents are prohibited from disclosure under HIPPA and accompanying regulation set forth in 45 C.F.R. 164 et. seq; I.C. § 66-348; I.C. § 9-340A(2); I.C. § 9-340B(7); I.C. § 9-340C(13). Please see privilege log. The

RESPONSES TO PLAINTIFF'S FIRST SET OF DOCUMENT
REQUESTS TO DEFENDANT STATE OF IDAHO - 5

documents to which the above objection does not apply, and to the extent they are responsive, are attached hereto as Exhibit "F."

REQUEST FOR PRODUCTION NO. 15: Produce all documents relating to the State of Idaho's involvement in the Bannock County Court action against Simpson, including any documents that the State of Idaho showed to the Court.

RESPONSE NO. 15: Objection. The requested documents are prohibited from disclosure under HIPPA and accompanying regulation set forth in 45 C.F.R. 164 et. seq; I.C. § 66-348; I.C. § 9-340A(2); I.C. § 9-340B(7); I.C. § 9-340C(13). Please see privilege log. The State was not directly involved in the Bannock County Court action. Documents provided to the court included reports of Dr. Nels Sather, dated May 16, 2011 and March 29, 2012, and from Dr. Richard Baker, dated November 17, 2011, and July 10, 2012. Please see the privilege log.

REQUEST FOR PRODUCTION NO. 16: Produce all documents relating to any conservator and/or guardianship proceeding initiated on behalf of Simpson.

RESPONSE NO. 16: Objection. The requested documents are prohibited from disclosure under HIPPA and accompanying regulation set forth in 45 C.F.R. 164 et. seq; I.C. § 66-348; I.C. § 9-340A(2); I.C. § 9-340B(7); I.C. § 9-340C(13) and work product and attorney client privilege doctrines. Please see privilege. The documents that are not subject to the above objection, to the extent responsive, are attached as Exhibit "A."

REQUEST FOR PRODUCTION NO. 17: Produce documents relating to any State policy, guidelines or instructions relating to the initiation of guardian and/or conservatorship proceedings on behalf of individuals facing criminal charges.

RESPONSES TO PLAINTIFF'S FIRST SET OF DOCUMENT
REQUESTS TO DEFENDANT STATE OF IDAHO - 6

RESPONSE NO. 17: The State has no such policy. As such, there are no documents to be produced in this regard.

REQUEST FOR PRODUCTION NO. 18: Produce documents relating to any State policy, guidelines, or instructions relating to any conflict or potential conflict between the rights of a victim and the State's interest in keeping secret the medical records of the person charged with the crime.

RESPONSE NO. 18: Objection. This Request inaccurately implies that the state has a policy of "keeping secrets." The state complies with all state and federal law regarding the confidentiality of medical records. Beyond these laws no such policy exists.

DATED this 2nd day of April, 2013.

BENOTT, ALEXANDER, HARWOOD
& HIGH, L.L.P.

By


Thomas B. High

Attorneys for Defendant State of Idaho

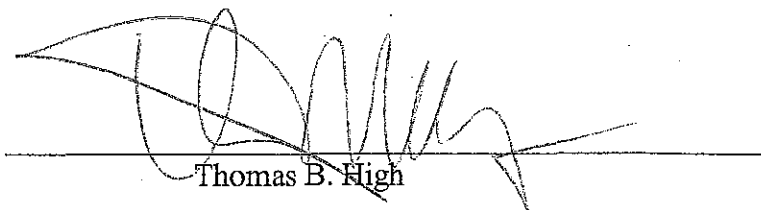
CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 2nd day of April, 2013, he caused a true and correct copy of the **RESPONSES TO PLAINTIFF'S FIRST SET OF DOCUMENT REQUESTS TO DEFENDANT STATE OF IDAHO** to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743
(Attorneys for Plaintiff)

Hand Delivered
U.S. Mail
Fax
Fed. Express

<input type="checkbox"/>
<input checked="" type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>



Thomas B. High

RESPONSES TO PLAINTIFF'S FIRST SET OF DOCUMENT
REQUESTS TO DEFENDANT STATE OF IDAHO - 8

Thomas B. High, ISB No. 2430
Bren E. Mollerup, ISB No. 7959
BENOIT, ALEXANDER,
HARWOOD & HIGH, L.L.P.
126 Second Avenue North
P.O. Box 366
Twin Falls, Idaho 83303-0366
Telephone: (208) 733-5463
Fax: (208) 734-1438
Email: high@benoitlaw.com
Email: mollerup@benoitlaw.com
Attorneys for Defendant State of Idaho
(16105\Discovery\Ans to Plain 1st Set of Interrogs\TBH\ka)

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

* * * * *

RYAN M. MITCHELL,

Plaintiff,

V.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity,
and BANNOCK COUNTY, IDAHO, a
political subdivision, SUSAN SIMPSON, as
Conservator and Guardian of Gerald Durk
Simpson, and DOES 1-25,

Defendants.

Case No. CV-12-4124-OC

**ANSWERS TO PLAINTIFF'S FIRST
SET OF INTERROGATORIES TO
DEFENDANT STATE OF IDAHO**

* * * * *

COMES NOW the Defendant, STATE OF IDAHO, and answers Plaintiff's First Set of Interrogatories to Defendant State of Idaho as follows:

ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES
TO DEFENDANT STATE OF IDAHO - 1

MAUK & BURGOWNE

APR 05 2013

RECEIVED

EXHIBIT

324 of 503

of 503
E

INTERROGATORY NO. 1: Identify each person who participated in the State's decision to stop providing care or services to Simpson on or around July 1, 2010, and describe everything that was considered in making that decision.

ANSWER NO. 1: It must first be noted Simpson continued to receive services until on or about August 9, 2010. The process that was used to decide to stop providing Simpson and other individuals with IDHW services is described in a letter written by Daniel Traughber and dated October 8, 2010. This letter is attached in Exhibit "B" to the document production served contemporaneously herewith. Decisions about specific clients were made by Dr. Daniel Traughber and members of the ACT Team.

Members of the ACT Team who provided services to Mr. Simpson include, Brandon Clark, Richard Bloxham, Christine Collaer-Muzzo, Craig Cumber, Myron Berglund, Dawn Peterson and Casey Locke. Dr. Daniel Traughber was also employed by AMH during the determination period and Dr. Sommer was the program lead. All except Brandon Clark, Dr. Traughber, and Dr. Sommer may be reached c/o Benoit, Alexander, Harwood & High, LLP. Brandon Clark resides at 2141 13th Street, Lewiston, Idaho 83501. Dr. Traughber and Dr. Sommer are now employed by Season of Hope, 4650 Hawthorne Road, Suite 3B, Chubbuck, Idaho, 83202, 208-273-9833.

INTERROGATORY NO. 2: Describe what Simpson was told by the State of Idaho Department of Health and Welfare when the Department stopped providing services to him on or around July 1, 2010, and identify each person who participated in communicating it to Simpson.

ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES
TO DEFENDANT STATE OF IDAHO - 2

ANSWER NO. 2: Mr. Simpson was informed that the Adult Metal Health program was designed for short term crisis intervention rather than long term treatment and that he did not meet the criteria for intensive level of services. He was informed that if he were to reach a crisis level in the future he was encouraged to submit for re-assessment. Aids for transition were also offered and Mr. Simpson was referred to a peer specialists, Martha Garrett. Mr. Simpson was also advised that if he was receiving Adult Mental Health medication that he should contact his nurse provider for a smooth transition. He was also given phone numbers for referral options.

INTERROGATORY NO. 3: Describe each follow-up visit that the State Department of Health and Welfare had with Simpson after he was dropped from its program on or around July 1, 2010.

ANSWER NO. 3: Objection. The requested documents are prohibited from disclosure under HIPPA and accompanying regulation set forth in 45 C.F.R. 164 et. seq; I.C. § 66-348; I.C. § 9-340A(2); I.C. § 9-340B(7); I.C. § 9-340C(13). Please see privilege log.

INTERROGATORY NO. 4: Describe all services that have been provided to Simpson by the Idaho State Department of Health and Welfare.

ANSWER NO. 4: ACT Team members delivered medications to Simpson's home, observed him take medications, taught him shopping skills and took him shopping, helped him with his budgeting, and provided him with training in social and other daily living skills.

INTERROGATORY NO. 5: Describe all services that were provided to Simpson through the Idaho Assertive Community Treatment program.

ANSWER NO. 5: ACT Team members delivered medications to Simpson's home, observed him take medications, taught him shopping skills and took him shopping, helped him

ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES
TO DEFENDANT STATE OF IDAHO - 3

with his budgeting, and provided him with training in social and other daily living skills.

INTERROGATORY NO. 6: Describe each medical diagnosis, treatment and/or prescription for Simpson as well as identify the person who made the diagnosis and/or prescription.

ANSWER NO. 6: Objection. The requested information is prohibited from disclosure under HIPPA and accompanying regulation set forth in 45 C.F.R. 164 et. seq; I.C. § 66-348; I.C. § 9-340A(2); I.C. § 9-340B(7); I.C. § 9-340C(13).

INTERROGATORY NO. 7: Identify each person who knew that Simpson had guns prior to September 27, 2010.

ANSWER NO. 7: ACT Team members never saw guns in Simpson's apartment. In approximately May 2009, Christine Collaer-Muzzo and Richard Bloxham saw Simpson walking in town with what appeared to be a gun. A photograph of him with the gun was posted where other Adult Mental Health staff could have seen it. No one knew if the gun belonged to Simpson.

INTERROGATORY NO. 8: Describe each prior arrest of, or criminal charge against, Simpson prior to September 28, 2010.

ANSWER NO. 8: Simpson was cited in 1995 for willful concealment (shoplifting) and in 1998 and 1999 for failing to provide proof of automobile insurance. Please see the repository attached to the Responses to Requests for Production.

INTERROGATORY NO. 9: Describe all efforts that the State of Idaho made to provide notice to Mr. Mitchell of the Bingham County Court proceeding that the State of Idaho initiated for Simpson in 2012.

ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES
TO DEFENDANT STATE OF IDAHO - 4

ANSWER NO. 9: Objection. This Interrogatory assumes that notice was legally required. Without waiving the same, the State did not provide any such notice.

INTERROGATORY NO. 10: Describe all efforts that the State of Idaho made to provide Mr. Mitchell with his victim rights as guaranteed by the Idaho Constitution and statutory law.

ANSWER NO. 10: Objection. This interrogatory assumes that the State had a legal duty.

INTERROGATORY NO. 11: Identify each person who reviewed or looked at Simpson's file or records (and their reasons for doing so) following the shooting of Mr. Mitchell on September 27, 2010.

ANSWER NO. 11: Defendant objects to this Interrogatory to the extent it calls for privileged attorney client communications and/or work product. Without waving the same, following the shooting, Mr. Simpson's hard copy records at the Human Development Center were taken to the Medical Records Department at State Hospital South for safekeeping. At that time, the Health Information Manager, Cindy Allred, and the Deputy Attorney General, James Price, quickly paged through the records to see what kind of records were there.

Access to Simpson's electronic Adult Mental Health records was restricted, but copies were made for and reviewed by the Deputy Attorney General in anticipation of a tort claim and litigation. Simpson's records at State Hospital South were accessed by a number of individuals for the purpose of providing care to him while he was hospitalized. A printout of those who accessed his records at State Hospital South is attached hereto as Exhibit "A."

ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES
TO DEFENDANT STATE OF IDAHO - 5

INTERROGATORY NO. 12: Describe any communications with Simpson or his representatives relating to Simpson's release from custody.

ANSWER NO. 12: For purposes of clarification, Simpson's commitment under 18-212 expired; he was not released from custody. David Williams, Unit Supervisor at State Hospital South, and Susan Simpson discussed discharge planning issues related to Simpson.

Tracy Beeton and Susan Simpson exchanged emails on July 9, 2012, about Susan flying to Idaho to assist Simpson in his transition to an Assisted Living home. Tracy Beeton also sent an email to a Bingham County court clerk on July 10, 2012, indicating that Simpson was being moved to an assisted living facility. On July 11, 2012, Tracy sent an email to Susan, indicating that her office was waiting for word from the prosecutor's office as to whether it would approve Simpson's move to the new facility. These emails were disclosed pursuant to the public records request.

INTERROGATORY NO. 13: Describe any communications with Bannock County or its representatives relating to Simpson's release from custody.

ANSWER NO. 13: There were discussions with Vic Pearson at the Bannock County Prosecutor's office prior to Simpson's commitment hearing on April 17, 2012, about the possibility that Simpson would never become fit to proceed with his criminal case nor meet the criteria for civil commitment. The State suggested that the appointment of a guardian was advisable so that the guardian could have some control over where he lived, how he was supervised, etc. should the commitment expire and Simpson not be civilly committed.

Vic agreed to allow the State to pursue the appointment of Susan Simpson as Simpson's guardian. As the expiration of Simpson's commitment approached, Bannock

ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES
TO DEFENDANT STATE OF IDAHO - 6

County (Vic Pearson) agreed to Simpson being placed in an assisted living center by his guardian.

INTERROGATORY NO. 14: Describe any communications with Simpson or his representatives relating to the dismissal of the criminal charges against Simpson.

ANSWER NO. 14: The prosecutor's office (Vic Pearson) indicated that they would not be dismissing the criminal charges. Susan Simpson responded the same day, inquiring what the implications would be for Simpson if the charges were not dropped. Tracy Beeton emailed a reply that day, stating "at this point just wait to see what happens." A copy of these emails are contained in Exhibit "A" attached to the Responses to Requests for Production.

INTERROGATORY NO. 15: Describe any communications with Bannock County or its representatives relating to the dismissal of the criminal charges against Simpson.

ANSWER NO. 15: During a telephone conversation with Vic Pearson of the Bannock County Prosecuting Attorney's office on July 13, 2012, he indicated that he would not be dismissing the criminal charges against Simpson.

INTERROGATORY NO. 16: Describe any communications with the Bannock County Court by the Idaho Attorney General's Office or the Idaho Department of Health and Welfare relating to the dismissal of criminal charges against Simpson or his release from custody.

ANSWER NO. 16: Objection. The requested documents are prohibited from disclosure under HIPPA and accompanying regulation set forth in 45 C.F.R. 164 et. seq; I.C. § 66-348; I.C. § 9-340A(2); I.C. § 9-340B(7); I.C. § 9-340C(13). Please see answers to Interrogatories 14 and 15..

ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES
TO DEFENDANT STATE OF IDAHO - 7

INTERROGATORY NO. 17: Identify each court proceeding that the State of Idaho has filed to obtain the appointment of conservator and/or guardianship for anyone who is facing criminal charges.

ANSWER NO. 17: Objection. The requested documents are prohibited from disclosure under HIPPA and accompanying regulation set forth in 45 C.F.R. 164 et. seq; I.C. § 66-348; I.C. § 9-340A(2); I.C. § 9-340B(7); I.C. § 9-340C(13). Without waiving the same, Defendant states that since 2005 the State has filed 32 conservatorship/guardianship proceedings for patients at State Hospital South or clients of Adult Mental Health in Region Six.

INTERROGATORY NO. 18: Identify the location where Simpson is currently residing.

ANSWER NO. 18: Objection. The requested documents are prohibited from disclosure under HIPPA and accompanying regulation set forth in 45 C.F.R. 164 et. seq; I.C. § 66-348; I.C. § 9-340A(2); I.C. § 9-340B(7); I.C. § 9-340C(13). Without waiving the same, Simpson was discharged from State Hospital South on July 16, 2012, to Lighthouse Living, 1005 Airport Road, Blackfoot, Idaho 83221.

INTERROGATORY NO. 19: Describe any limitations or restrictions that have been placed on Simpson's freedom by the State.

ANSWER NO. 19: The State does not have the authority to place limitations or restrictions on Simpson because he is not in its custody.

ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES
TO DEFENDANT STATE OF IDAHO - 8

STATE OF IDAHO

By

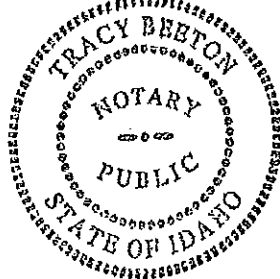
STATE OF IDAHO)
) ss.
County of Bannock)

That I am the Behavioral Health East Hub Administrative Director and Hospital Administrator for State Hospital South for the State of Idaho; that I have read the foregoing ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANT STATE OF IDAHO, know the contents thereof, and believe the same to be true based upon my information and belief.

STATE OF IDAHO

By

SUBSCRIBED AND SWORN to before me this 1st day of April, 2013.



NOTARY PUBLIC

Residing at: Barnock County
My Commission Expires: April 9, 2027

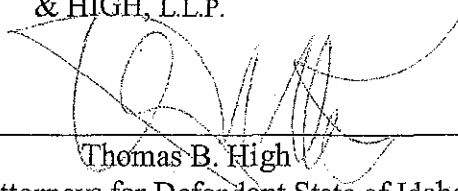
332 of 503

Rule 26(f) Certification.

DATED this 2nd day of April, 2013.

BENOIT, ALEXANDER, HARWOOD
& HIGH, L.L.P.

By


Thomas B. High

Attorneys for Defendant State of Idaho

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 2nd day of April, 2013, he caused a true and correct copy of the **ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANT STATE OF IDAHO** to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743
(Attorneys for Plaintiff)

Hand Delivered
U.S. Mail
Fax
Fed. Express

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Thomas B. High

ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES
TO DEFENDANT STATE OF IDAHO - 10

Thomas B. High, ISB No. 2430
Bren E. Mollerup, ISB No. 7959
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126 Second Avenue North
P.O. Box 366
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Fax: (208) 734-1438
Email: high@benoitlaw.com
Email: mollerup@benoitlaw.com
Attorneys for Defendant State of Idaho
(16105/PrivilegeLog/BEM)

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RYAN M. MITCHELL,

Plaintiff,

v.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity,
and BANNOCK COUNTY, IDAHO, a
political subdivision, SUSAN SIMPSON, as
Conservator and Guardian of Gerald Durk
Simpson, and DOES 1-25,

Defendants.

Case No. CV-12-4124-OC

**PRIVILEGE AND STATUTORY
EXEMPTION LOG**

COMES NOW, the above entitled Defendant, State of Idaho, by and through its attorneys of
record, Benoit, Alexander, Harwood & High, LLP, and submits this Privilege Log for documents

PRIVILEGE AND STATUTORY EXEMPTION LOG - 1

MAUK & BURGOYNE

APR 05 2013

RECEIVED



requested by Plaintiff in their Initial Discovery Request for which Defendants are claiming a privilege or statutory exemption.

For each document withheld you will find listed the type of document, Bates Number, date of creation, the recipient of the document, and the subject matter, along with the applicable privilege.

DOCUMENT	BATES NO.	DATE OF CREATION	RECIPIENT/ AUTHOR OF DOCUMENT	SUBJECT MATTER	PRIVILEGE/ STATUTORY EXEMPTION
Critical Incident Report	130	9/28/10	Division of Behavioral Health, Region 6.	Report regarding Gerald Simpson	These documents have been provided but have been redacted to protect healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-340C(13).
Medical Treatment records for Mr. Simpson	74-84	Various	N/A	Evaluation and treatment of Mr. Simpson	These documents have been provided but have been redacted to protect healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-340C(13).

PRIVILEGE AND STATUTORY EXEMPTION LOG -2

Letter from Heath Sommers, Ph.D.	179-180	6/23/10	Mr. Simpson	Letter regarding health treatment from Adult Mental Health	This document has been withheld to protect healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-340C(13).
Discharge Summary	181	8/9/10	N/A	Notes on Mr. Simpson's treatment.	This document has been withheld to protect healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-340C(13).
Treatment notes regarding Mr. Simpson	182-192	Various	Various	Treatment notes regarding Mr. Simpson's treatment at adult mental health.	These documents have been withheld to protect healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-340C(13).
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an Incapacitated person in Case No. CV 2012-0862 Bingham County					I.C. § 66-348; I.C. § 9-340A(2);
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State Hospital South records from Episode #2	571-609	6/16/75-6/20/75	Various	Treatment Records for Mr. Simpson	These documents have been withheld to protect healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-340C(13).
State Hospital South Records from Episode #3	610-695	2/24/81-6/10/81	Various	Treatment Records for Mr. Simpson	These documents have been withheld to protect healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-340C(13).
State Hospital South Records from Episode #4	696-1018	10/12/10-12/02/10	Various	Treatment Records for Mr. Simpson	These documents have been withheld to protect healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-340C(13).
State Hospital South Records from Episode #5	1019-2005	3/17/11-11/22/11	Various	Treatment Records for Mr. Simpson	These documents have been withheld to protect

PRIVILEGE AND STATUTORY EXEMPTION LOG - 8

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Treatment summaries and progress notes for Mr. Simpson	2074-2421	4/27/12-7/16/12	Various	Treatment Records for Mr. Simpson	These documents have been withheld to protect healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-340C(13).
All medical records and Treatment files pertaining to Mr. Simpson	2422-Ongoing	4/8/75-Current	Various	Treatment Records for Mr. Simpson	These documents have been withheld to protect healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-

DATED this 2nd day of April, 2013.

BENOIT, ALEXANDER, HARWOOD
& HIGH, L.L.P.

By


Thomas B. High

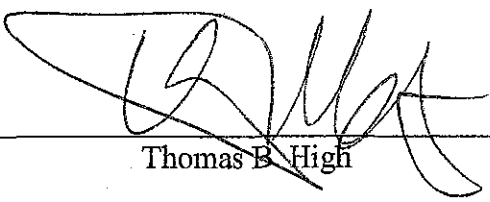
Attorneys for Defendant State of Idaho

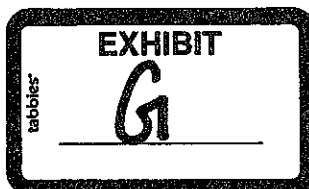
CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 2nd day of April, 2013, he caused a true and correct copy of the **PRIVILEGE AND STATUTORY EXEMPTION** LOG to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743
(Attorneys for Plaintiff)

Hand Delivered ☐
U.S. Mail ☒
Fax ☐
Fed. Express ☐


Thomas B. High



requested by Plaintiff in their Initial Discovery Request for which Defendants are claiming a privilege or statutory exemption.

For each document withheld you will find listed the type of document, Bates Number, date of creation, the recipient of the document, and the subject matter, along with the applicable privilege.

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PRIVILEGE AND STATUTORY EXEMPTION LOG - 5

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PRIVILEGE AND STATUTORY EXEMPTION LOG - 7

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State Hospital South Records from Episode #6	2006-2073	4/27/12-7/16/12	Various	Treatment Records for Mr. Simpson	These documents have been withheld to protect healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-340C(13).
Treatment summaries and progress notes for Mr. Simpson	2074-2421	4/27/12-7/16/12	Various	Treatment Records for Mr. Simpson	These documents have been withheld to protect healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-340C(13).
Medical records and Treatment files pertaining to Mr. Simpson	2422-5620	4/8/75-Current	Various	Treatment Records for Mr. Simpson	These documents have been withheld to protect healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-

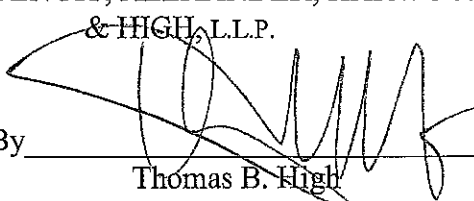
					340C(13).
Medical records and Treatment files pertaining to Mr. Simpson	5621-5859	10/1995-6/1997	Various	Treatment Records for Mr. Simpson	These documents have been withheld to protect healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-340C(13).
Medical Records and Treatment files pertaining to Mr. Simpson	5902-5950	7/17/12-7/24/12	Various	Treatment records for Mr. Simpson	These documents have been withheld to protect healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-340C(13).
Medical Records and Treatment files pertaining to Mr. Simpson	5984-6094	8/27/09-1/17/13	Various	Treatment records for Mr. Simpson	These documents have been withheld to protect healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-340C(13).
Treatment Summary Updates for Mr. Simpson	5883-5889	3/17/11	N/A	Treatment records for Mr. Simpson	These documents have been withheld to protect healthcare information protected by 45 C.F.R. 164 et.

					seq; I.C. § 9-340C(13).
Emails from Tracy Sessions	5876	June 19, 2012	Sara Spaulding to Medicaid	Treatment and Healthcare information for a patient other than Mr. Simpson <u>Redacted</u>	Redacted to protect healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-340C(13).
Lighthouse Living Medical Records Request	6095-6102	July 13, 2012	State Hospital South to Lighthouse Living Administrator	Treatment and medical information regarding Mr. Simpson	These documents have been withheld to protect healthcare information protected by 45 C.F.R. 164 et. seq; I.C. § 9-340C(13).

DATED this 18th day of July, 2013.

BENOIT, ALEXANDER, HARWOOD
& HIGH, L.L.P.

By


Thomas B. High

Attorneys for Defendant State of Idaho

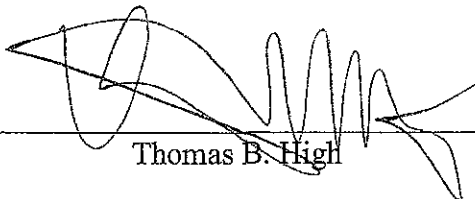
CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 15th day of July, 2013, he caused a true and correct copy of the **PRIVILEGE AND STATUTORY EXEMPTION LOG** to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743
(Attorneys for Plaintiff)

Hand Delivered
U.S. Mail
Fax
Fed. Express

<input type="checkbox"/>
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<input type="checkbox"/>
<input type="checkbox"/>



Thomas B. High

MAUK & BURGOWNE

Attorneys at Law

Telephone: (208) 345-2654
Facsimile: (208) 345-3319
E-mail: nels@maukburgoyne.com

515 South 6th Street
Post Office Box 1743
Boise, Idaho 83701-1743

July 23, 2013

VIA EMAIL & REGULAR MAIL

Thomas B. High
Bren E. Mollerup
Benoit, Alexander, Harwood & High, LLP
126 Second Avenue North
P.O. Box 366
Twin Falls, ID 83303-0366

Re: Meet and Confer – IRCP 37

Dear Messrs. High & Mollerup:

I am sending this letter to address our concerns relating to the State of Idaho's inappropriate and inadequate responses, and/or failure to respond to Plaintiff's Interrogatories and Document Requests. I would request that we set a time during the week of July 29, 2013 to meet and confer over these particular issues and see if we can reach some agreement. If we cannot, it is my intent to file a motion to compel.

Document Requests

The vast majority of the document requests asked for a straightforward production of material relevant to the issues raised by this lawsuit:

Request No. 1: Produce all documents relating to the care and treatment that the State of Idaho has provided to Simpson.

Request No. 2: Produce all documents relating to communications that discuss the release (or potential release) of Simpson.

Request No. 3: Produce all documents relating to communications that discuss the dismissal (or potential dismissal) of criminal charges against Simpson.



Request No. 4: Produce all documents relating to the State of Idaho's decision to stop providing help or services to Simpson on or around July 1, 2010.

Request No. 5: Produce all documents relating to any effort the State of Idaho made to place Simpson in a new program during the summer of 2010.

Request No. 6: Produce all documents that discuss or relate in any way to Simpson's propensity for violence.

Request No. 7: Produce all documents that discuss or relate in any way to whether Simpson was a threat to others.

Request No. 10: Produce all documents relating to the release of Simpson from State of Idaho custody.

Request No. 15: Produce all documents relating to the State of Idaho's involvement in the Bannock County Court action against Simpson, including any documents that the State of Idaho showed to the Court.

Request No. 16: Produce all documents relating to any conservator and/or guardianship proceeding initiated on behalf of Simpson.

Unfortunately, all of these simple questions were met with the same basic boilerplate objection: "The requested documents are prohibited from disclosure under HIPPA and accompanying regulations set forth in 45 C.F.R. 164 et. seq; I.C. § 66-348; I.C. § 9-340A(2); I.C. § 9-340B(7); I.C. § 9-340C(13)."

Given the fact that my client was almost killed after the State terminated its supervision and services for Simpson, I think that he has an interest and a right to see the materials that the State has refused to produce. I think that there is a simple solution that would eliminate this roadblock to discovery of information relevant to this lawsuit.

I would propose that we enter into an agreement by which we agree to respect any claim of confidentiality or privacy asserted by the State, and agree that we will not use any material so designated until we first seek permission from the Court. That would place the burden on us, but, at the same time, give the victim (i.e. Mr. Mitchell and his counsel) the opportunity to review the information that is contained in the State's records. Please let me know if this is agreeable to the State so that we can move discovery forward.

On another issue, in connection with the photographs taken of Simpson walking down the streets of Pocatello with his gun, I was surprised that the State did not produce any emails relating to this incident. Given the fact that the photographs were "posted" at the State office, I would have expected to see at least some on-line discussion by State employees. I would think that a simple search of the Health and Welfare server using "Simpson," "gun" or "rifle," and/or "photo" or "photograph" should turn up relevant communications.

Interrogatories

Interrogatory No. 1: This question asked the State to "describe everything that was considered" in connection with the State's decision to terminate its services and support of Simpson. The State did not answer that part of the question. Given the fact that the State has based its summary judgment motion on the allegation that the State's decision "was based, in large measure, on decreases in funding..." it must answer the question and "describe everything that was considered."

Interrogatory No. 2: This question asked the State to "identify each person who participated in communicating [the termination decision] to Simpson." The State did not provide an answer to this part of the question.

Interrogatory No. 6: The State had no problem providing the Idaho District Court in Bingham County with a description of Simpson's medical diagnosis as well as describing some of his medications. Those documents were publicly filed with the Court when the State was representing Simpson. That same information should be made available to Simpson's victim.

Interrogatory No. 7: The State did not answer the question. Identify the other people who knew that Simpson possessed a gun. The cryptic statement that "other Adult Mental Health staff" could have seen the pictures of Simpson with his guns, does not answer the question.

Interrogatory No. 16: This question asks the State to describe its communications with the District Court for Bannock County relating to the dismissal of Simpson's criminal charges or his release from custody. The Courts of this State are open to the public. Whatever communications occurred cannot be hidden behind a barrage of objections.

Interrogatory No. 17. The State was asked to identify each court proceeding it "has filed to obtain the appointment of [a] conservator and/or guardianship for anyone who is facing criminal charges." Again, the State cannot hide behind third party confidentiality concerns. The State should identify the 32 instances where this has occurred, given the fact that the criminal proceedings should all have been a matter of public record. In addition, the State should not limit its response to State Hospital South and Region Six.

Privilege Log

I think that the State has been overzealous in its attempt to hide material behind a cloak of privilege. During the meet and confer, there are several issues relating to the State's privilege log that I would like to discuss, including:

1. The State provided information and reports to Judge Carnaroli who was presiding over the criminal case against Simpson - - *State of Idaho v. Gerald Durk Simpson*, Idaho State District Court for Bannock County, Case No. CR-2010-0015926-FE. Mr. Mitchell, the victim of Simpson's violent crime, should be entitled to obtain copies of any materials that the State provided to the Court in the criminal case that was supposed to have been brought to protect the public as well as vindicate Mr. Mitchell's rights as a crime victim.

2. There are several documents that the State filed with the District Court for Bingham County that are part of the record (e.g., the State's Petition, Dr. Murdock's letter, the Visitor's Report, etc.) and available to the public - - *In re Gerald Durk Simpson*, Idaho State District Court for Bingham County, Case No. CV-2012-0000862. Nevertheless, the State has withheld these very same documents from production in this lawsuit.

3. As part of the Privilege Log, the State was supposed to have identified all of the recipient(s) of each document withheld on privilege grounds. Unfortunately, rather than identifying the recipient(s), the State has instead lumped the author and recipient categories together and then used intentionally vague terms such as "N/A," "Various," and "Attorney General's Staff."

4. The State has grouped hundreds, and in some cases thousands, of documents together into a single entry on its Privilege Log and simply described them as "State Hospital South Records." That hardly complies with the instructions:

In accordance with Rule 26 of the Idaho Rules of Civil Procedure, if any objection is made to any request herein based on the attorney-client privilege, the work product rule, or any other privilege, and such privilege is asserted to avoid disclosing the requested information or materials, you must describe the information or materials withheld and the privilege relied on in sufficient detail to enable Plaintiff and his counsel to assess the applicability of the privilege. Such details shall include: (a) A description of the allegedly privileged communication withheld; (b) A list of the recipient(s) of the information or materials withheld; (c) The date of the allegedly privileged communication withheld; (d) The subject of the allegedly privileged communication withheld; (e) The type of privileged communication withheld (e.g., email, letter, memorandum or

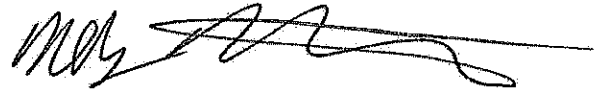
High/Mollerup
July 23, 2013
Page 5

computer database); and (f) The nature of the privilege(s) claimed. The detail provided must be sufficient for Plaintiff to appropriately identify the information as would be required for Plaintiff to test the claim of privilege on a motion to compel.

Please let me know when you will be able to have the meet and confer during the week of July 29, 2013.

Sincerely,

MAUK & BURGOYNE

A handwritten signature in black ink, appearing to read 'BNM', followed by a long, horizontal, wavy line that extends across the page.

Briane Nelson Mitchell

BNM/ska

LAW OFFICES
**BENOIT, ALEXANDER,
HARWOOD & HIGH, L.L.P.**

HARRY BENOIT 1893 - 1966
EDWARD L. BENOIT 1921 - 1998

ROBERT M. HARWOOD
THOMAS B. HIGH, P.A.
BRENE E. MOLLBRUP

J. ROBERT ALEXANDER
Of Counsel

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160 SECOND ST. E., SUITE 218
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KBTCHUM, ID 83340-2246
TELEPHONE (208) 726-4900
FACSIMILE (208) 726-3101

July 29, 2013

Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743

RE: Mitchell v. State of Idaho

Dear Nels:

I am in receipt of your July 23rd letter requesting a meet and confer. Please consider this letter our response to your concerns regarding the discovery issues you have raised. It is our position that a teleconference is not necessary and will not be productive.

In your letter, you raise concerns regarding Requests for Production, Answers to Interrogatories and what you claim to be an "overzealous" privilege log. Each of your concerns is addressed below.

1. REQUESTS FOR PRODUCTION

Request Nos. 1, 2, 3, 4, 5, 6, 7, 10, 15 and 16 uses the term "all documents." As a result of this broad language, these Requests have interpreted to call for medical records and evaluations/medical records created for the care of Mr. Simpson. Such records are exempt under state and federal law. You will note that to the extent records do not fall within these exemptions, they have been provided to you.

Specifically, Responses to Requests 1, 2, 3, 4, 10 and 16 clearly indicate that all non-privileged/exempt documents which are responsive have been provided.



LAW OFFICES
**BENOIT, ALEXANDER,
HARWOOD & HIGH, L.L.P.**

Briane Nelson Mitchell
Page - 2
July 29, 2013

Request No. 5 is poorly phrased and gives rise to the objection set forth regarding the State's authority to place Mr. Simpson in alternative care after his release. With regard to medical/physiological records relating to Mr. Simpson in Request Nos. 6 and 7, these documents are protected by the cited statute and the State stands by these objections.

With regard to Request Nos. 15 and 16, reports provided are exempt under I.C. § 66-348. As such, no further documents will be provided.

You further indicate in your letter that your client has an "interest and right" to see the materials withheld. However, you provide no citation to rule or law which would entitle you to disclosure.

With regard to your request that the State provide the documents withheld and require court approval before use, is not workable. Such a procedure fails to comply with 45 CFR 164 et seq. (HIPPA). Absent a court order before disclosure, these documents will not be released.

The concerns raised regarding the photos of Mr. Simpson appear to be based on a misunderstanding of the word "post." For clarification purposes, it should be noted that "post" refers to the hanging of the photos with a thumb tack on a cubicle. They were not circulated via email. Email records of the State have been adequately searched and no discussion has been discovered.

2. INTERROGATORIES

Interrogatory No. 1 – it should first be noted that Exhibit "B" referenced in the Interrogatory Answer provides a description of the consideration regarding termination. The documents which have been provided also make these considerations clear. However, to make the response clear, please see Supplemental Answer to Interrogatory No. 1.

Interrogatory No. 2 – please see the Supplemental Answer provided.

Interrogatory No. 6 – not all reports filed with the court in a guardianship proceeding are public. The State stands behind its previous objection. Additionally, it should be noted this Interrogatory is not limited to the guardianship proceeding.

LAW OFFICES
**BENOIT, ALEXANDER,
HARWOOD & HIGH, L.L.P.**

Briane Nelson Mitchell
Page - 3
July 29, 2013

Interrogatory No. 7 – this Answer clearly indicates that outside Christine Collaer-Muzzo and Richard Bloxham, no other individuals have been identified who have knowledge that “Simpson had guns” as stated in the Interrogatory. There is nothing “cryptic” about this answer.

Interrogatory No. 16 – again, not all guardianship filings are public. The State is aware of the public’s right to access the court system. However, for certain proceeding, not all records are public. As such, the State stands behind its objections.

Interrogatory No. 17 – first, it must be noted that it is difficult to see how this Interrogatory is reasonably calculated to lead to admissible evidence. The State has amended its response to reflect the same. Statewide guardianship proceedings have no relevance to the case at hand.

An official set of signed Supplemental Responses will be served once signatures can be obtained.

3. **PRIVILEGE LOG**

As noted above, the State stands by its objections to disclosing further documents. We are currently working on an Amended Privilege Log. However, this will take some time. It should be noted that not all documents have a recipient. They simply become part of the medical file. There is no requirement that each page separately be addressed in the Log.

Hopefully, these responses alleviate your concerns.

Sincerely,



Bren E. Mollerup

BEM/ka
(16105\Mitchell-1-ltr)

MAUK & BURGOYNE

Attorneys at Law

Telephone: (208) 345-2654
Facsimile: (208) 345-3319
E-mail: nels@maukburgoyne.com

515 South 6th Street
Post Office Box 1743
Boise, Idaho 83701-1743

August 6, 2013

VIA EMAIL & FIRST CLASS MAIL

Susan Simpson
765 Channing Ave.
Palo Alto, CA 94301

Re: Ryan Mitchell v. Gerald Durk Simpson, et al.
Case No. CV 12-4124 OC

Dear Ms. Simpson:

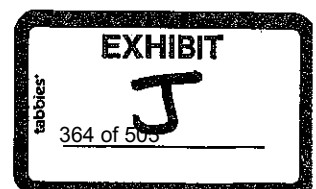
We have talked before about our need to have the opportunity to review the State's records relating to your brother, Gerald Durk Simpson. Unfortunately, you have not responded to our request that you agree to the production so that the State cannot shield the records from discovery.

Attached to this letter is a copy of the State's current Privilege Log showing that is has withheld approximately 5,700 pages of relevant material, ostensibly based upon its desire to protect the privacy rights of your brother.

With this letter, I wanted to make one last effort before we are forced to file a Motion to Compel against the State. As I explained to you in an earlier email:

The State continues to refuse to show Durk's records to us. In fact, as you will see in our papers opposing the State's motion, the State has only produced around 2-300 pages of documents, while withholding more than 5700 pages (that we know about) based upon privacy and confidentiality objections. We have been trying to get around this roadblock. As a result, we have proposed the following solution to the State:

I would propose that we enter into an agreement by which we agree to respect any claim of confidentiality or privacy asserted by the State, and agree that we will not use any material so designated until we first seek permission from the Court. That would place the burden on us, but, at the



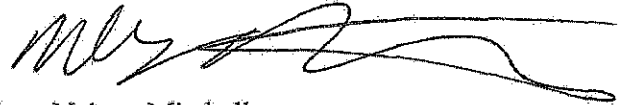
Susan Simpson
August 6, 2013
Page 2

same time, give the victim (i.e. Mr. Mitchell and his counsel) the opportunity to review the information that is contained in the State's records. Please let me know if this is agreeable to the State so that we can move discovery forward.

Please let us know if you have any objections to the agreement that we proposed to the State. If you do have any objections to the release of the records, please notify us and the Court (the Court's address is 624 E Center, Rm. 220, Pocatello, ID 83201 and any correspondence to the Court should include reference to this case, *Ryan Mitchell v. Gerald Durk Simpson, et al.*, Bannock County Case No. CV 12-4124 OC).

Sincerely,

MAUK & BURGOYNE

A handwritten signature in dark ink, appearing to read 'Briane Nelson Mitchell', with a long horizontal flourish extending to the right.

Briane Nelson Mitchell

BNM/ska
Enclosure

ORIGINAL

WILLIAM L. MAUK (ISB #1825)
BRIANE NELSON MITCHELL (ISB #2346)
MAUK & BURGOYNE
515 South 6th Street
Post Office Box 1743
Boise, Idaho 83701-1743
Telephone: (208) 345-2654
Facsimile (208) 345-3319
nels@maukburgoyne.com

2013 SEP -3 PM 2:03
BANNOCK COUNTY

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

RYAN M. MITCHELL,

Plaintiff,

vs.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity, and
BANNOCK COUNTY, IDAHO, a political
subdivision, SUSAN SIMPSON, as
Conservator and Guardian of Gerald Durk
Simpson, and DOES 1-25,

Defendants.

Case No. CV 12-4124 OC

**FINAL JUDGMENT BETWEEN
RYAN M. MITCHELL AND
BANNOCK COUNTY**

IT IS HEREBY FOUND, based upon the Stipulated Consent Decree and Final Judgment between Plaintiff Ryan M. Mitchell and Defendant Bannock County that there is no just reason for delay in the entry of a final judgment on the claims brought against Bannock County.

IT IS HEREBY ORDERED AND DECLARED pursuant to Idaho Code Section 10-1201, et seq., that Bannock County violated the rights of Ryan M. Mitchell under the Idaho Constitution, Article I, Section 22 and Idaho Code Section 19-5706 by failing to give Ryan M. Mitchell prior notification of (1) the criminal proceedings that resulted in the release of Gerald

FINAL JUDGMENT BETWEEN RYAN M. MITCHELL AND BANNOCK COUNTY - 1

Durk Simpson from State custody and the dismissal of the criminal charge against Gerald Durk Simpson, and (2) the opportunity to be present and heard at any of those proceedings.

IT IS HEREBY ORDERED AND ADJUDGED that Bannock County and its officers, agents, servants, employers and attorneys are ordered to provide Ryan M. Mitchell with notice and an opportunity to be heard at any future proceedings in Bannock County, if any, arising from Gerald Durk Simpson's shooting of Mr. Mitchell.

IT IS FURTHER ORDERED that Ryan M. Mitchell and Bannock County each bear their own costs and fees with respect to each other (but this does not affect the right of either to pursue costs and fees against any of the other parties to this matter).

DATED This 30 day of August, 2013



District Judge

CLERK's CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3 day of ~~August~~^{September}, 2013, I caused a true and correct copy of the above and foregoing instrument to be served upon the following individuals in the manner indicated below:

Susan Simpson
765 Channing Ave.
Palo Alto, CA 94301

☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

*As Conservator and Guardian of
Gerald Durk Simpson*

Thomas B. High
Bren E. Mollerup
Benoit, Alexander, Harwood & High, LLP
126 Second Avenue North
P.O. Box 366
Twin Falls, ID 83303-0366

☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

Attorneys for Defendant State of Idaho

Ian N. Service
Bannock County Prosecutor's Office
624 E Center
P.O. Box P
Pocatello, ID 83201


☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

Attorneys for Defendant Bannock County

Briane Nelson Mitchell
Mauk & Burgoyne
P.O. Box 1743
Boise, ID 83701-1743

☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

Attorneys for Plaintiff Ryan M. Mitchell



Deputy Clerk

ORIGINAL

WILLIAM L. MAUK (ISB #1825)
BRIANE NELSON MITCHELL (ISB #2346)
MAUK & BURGOYNE
515 South 6th Street
Post Office Box 1743
Boise, Idaho 83701-1743
Telephone: (208) 345-2654
Facsimile (208) 345-3319
nels@maukburgoyne.com

FILED
BANNOCK COUNTY
CLERK OF THE COURT

2013 SEP 16 PM 12:51

BY [Signature]
DEPUTY CLERK

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

RYAN M. MITCHELL,

Plaintiff,

vs.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity, and
BANNOCK COUNTY, IDAHO, a political
subdivision, SUSAN SIMPSON, as
Conservator and Guardian of Gerald Durk
Simpson, and DOES 1-25,

Defendants.

Case No. CV 12-4124 OC

**PLAINTIFF RYAN M. MITCHELL'S
MOTION TO DISQUALIFY FOR
CAUSE PURSUANT TO IRCP 40(d)(2)**

COMES NOW The Plaintiff, Ryan M. Mitchell, by and through his attorneys, and moves to disqualify the Honorable Robert C. Naftz from presiding in this matter.

This Motion is based upon the pleadings and documents on file with the Court, the Affidavit of Briane Nelson Mitchell filed with this Motion, and the Memorandum filed in Support of this Motion.

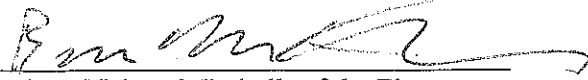
**PLAINTIFF RYAN M. MITCHELL'S MOTION TO DISQUALIFY FOR CAUSE PURSUANT TO IRCP
40(d)(2) - 1**

012852

Dated this 13th day of September, 2013.

Respectfully submitted,

MAUK & BURGOYNE

By 
Briane Nelson Mitchell, of the Firm,
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of September, 2013, I caused a true and correct copy of the above and foregoing instrument to be served upon the following individuals in the manner indicated below:

Susan Simpson
765 Channing Ave.
Palo Alto, CA 94301
ssimpsonbv@gmail.com

☒ U.S. Mail
☐ Facsimile
☒ Email
☐ Hand Delivery

*As Conservator and Guardian of
Gerald Durk Simpson*

Thomas B. High
Bren E. Mollerup
Benoit, Alexander, Harwood & High, LLP
126 Second Avenue North
P.O. Box 366
Twin Falls, ID 83303-0366

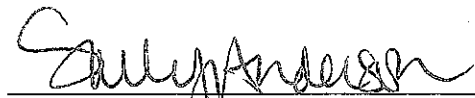
☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

Attorneys for Defendant State of Idaho

Ian N. Service
Bannock County Prosecutor's Office
624 E Center
P.O. Box P
Pocatello, ID 83201

☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

Attorneys for Defendant Bannock County



Sally Anderson,
Assistant to Briane Nelson Mitchell

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BRIANE NELSON MITCHELL (ISB #2346)
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nels@maukburgoyne.com

Attorneys for Plaintiff

FILED
BANNOCK COUNTY
CLERK OF THE COURT

2013 SEP 16 PM 12:51

BY [Signature]
DEPUTY CLERK

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

RYAN M. MITCHELL,

Plaintiff,

vs.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity, and
BANNOCK COUNTY, IDAHO, a political
subdivision, SUSAN SIMPSON, as
Conservator and Guardian of Gerald Durk
Simpson, and DOES 1-25,

Defendants.

Case No. CV 12-4124 OC

**MEMORANDUM IN SUPPORT OF
PLAINTIFF RYAN M. MITCHELL'S
MOTION TO DISQUALIFY FOR
CAUSE PURSUANT TO IRCP 40(d)(2)**

Rule 40(d)(2) of the Idaho Rules of Civil Procedure provides that a party may disqualify a judge for cause from presiding in any action based upon the ground that "the judge or magistrate has been attorney or counsel for any party in the action or proceeding." IRCP 40(d)(2)3.

Judge Robert C. Naftz has been an attorney and counsel for the State of Idaho. Additionally, as a Deputy in the Idaho State Attorney General's Office, Judge Naftz served as an

**MEMORANDUM IN SUPPORT OF PLAINTIFF RYAN M. MITCHELL'S MOTION TO DISQUALIFY
FOR CAUSE PURSUANT TO IRCP 40(d)(2) - 1**

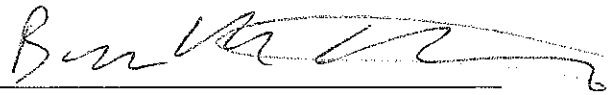
attorney or counsel to the Idaho State Hospital South and the Idaho State Department of Health and Welfare.

Based upon the foregoing, Judge Naftz should be disqualified and this case should be referred to another District Judge.

Dated this 13th day of September, 2013.

Respectfully submitted,

MAUK & BURGOYNE

By 
Briane Nelson Mitchell, of the Firm,
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of September, 2013, I caused a true and correct copy of the above and foregoing instrument to be served upon the following individuals in the manner indicated below:

Susan Simpson
765 Channing Ave.
Palo Alto, CA 94301
ssimpsonbv@gmail.com

☒ U.S. Mail
☐ Facsimile
☒ Email
☐ Hand Delivery

*As Conservator and Guardian of
Gerald Durk Simpson*

Thomas B. High
Bren E. Mollerup
Benoit, Alexander, Harwood & High, LLP
126 Second Avenue North
P.O. Box 366
Twin Falls, ID 83303-0366

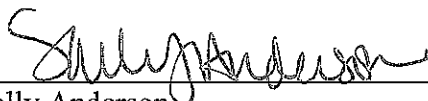
☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

Attorneys for Defendant State of Idaho

Ian N. Service
Bannock County Prosecutor's Office
624 E Center
P.O. Box P
Pocatello, ID 83201

☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

Attorneys for Defendant Bannock County



Sally Anderson,
Assistant to Briane Nelson Mitchell

FILED
BANKNOCK COUNTY
CLERK OF THE COURT
JUN 12 5

2013 SEP 16 PM 12:51

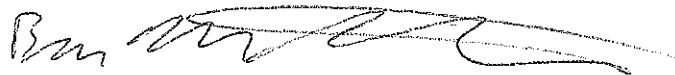
BY DEPUTY CLERK

2. This case was referred to the Honorable Robert C. Naftz for complete resolution by an order signed by Administrative District Judge Stephen S. Dunn on August 16, 2013 and filed with the Clerk on August 20, 2013.

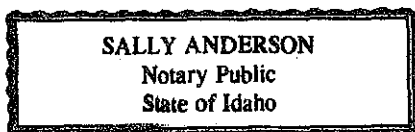
3. The State of Idaho is a Defendant in this lawsuit. The actions taken by the State of Idaho Attorney General's Office, the Idaho State Department of Health and Welfare, and Idaho State Hospital South are the subject of the three causes of action against the State of Idaho.

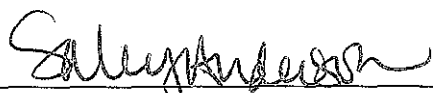
4. The State of Idaho is being represented by Mr. Bren Mollerup of Benoit, Alexander, Harwood & High, LLP in this lawsuit. After this matter was referred to Judge Naftz, Mr. Mollerup telephoned and informed me that Judge Naftz had previously been employed by the State of Idaho Attorney General's Office and that he had held the same position as Mr. James Price, who is the Idaho State Deputy Attorney General in Pocatello, Idaho, who represents Idaho State Hospital South and the Idaho State Department of Health and Welfare and played a key role in connection with the events underlying this lawsuit.

Dated this 13th day of September, 2013.


Briane Nelson Mitchell

SUBSCRIBED AND SWORN to before me, the undersigned Notary in and for said State, this 13th day of September, 2013.




NOTARY PUBLIC For Idaho
Residing at Boise, therein.
My Commission expires April 24, 2018

AFFIDAVIT OF BRIANE NELSON MITCHELL IN SUPPORT OF PLAINTIFF RYAN M. MITCHELL'S
MOTION TO DISQUALIFY FOR CAUSE PURSUANT TO IRCP 40(d)(2)- 2

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of September, 2013, I caused a true and correct copy of the above and foregoing instrument to be served upon the following individuals in the manner indicated below:

Susan Simpson
765 Channing Ave.
Palo Alto, CA 94301
ssimpsonbv@gmail.com

☒ U.S. Mail
☐ Facsimile
☒ Email
☐ Hand Delivery

*As Conservator and Guardian of
Gerald Durk Simpson*

Thomas B. High
Bren E. Mollerup
Benoit, Alexander, Harwood & High, LLP
126 Second Avenue North
P.O. Box 366
Twin Falls, ID 83303-0366

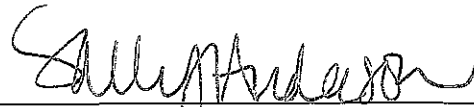
☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

Attorneys for Defendant State of Idaho

Ian N. Service
Bannock County Prosecutor's Office
624 E Center
P.O. Box P
Pocatello, ID 83201

☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

Attorneys for Defendant Bannock County



Sally Anderson,
Assistant to Briane Nelson Mitchell

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RYAN M. MITCHELL,

Plaintiff,

vs.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity
and BANNOCK COUNTY, IDAHO, a
political subdivision, SUSAN SIMPSON,
as Conservator and Guardian of
Gerald Durk Simpson, and DOES 1-25,

Defendants.

CASE NO. CV-2012-4124-OC

ORDER DENYING MOTION TO
DISQUALIFY

NATURE OF THE ACTION

The Plaintiff has filed a motion to disqualify this Court pursuant to Rule 40(d)(2)(A)(3) of the Idaho Rules of Civil Procedure ("IRCP").¹ That rule pertains to the disqualification of a judge for cause. When ruling upon a motion for disqualification pursuant to Rule 40(d)(2), there is no requirement that the court's determination must be preceded by an evidentiary hearing.

¹ **Rule 40(d)(2). Disqualification for cause.**

(A) Grounds. Any party to an action may disqualify a judge or magistrate for cause from presiding in any action upon any of the following grounds:

1. That the judge or magistrate is a party, or is interested, in the action or proceeding.
2. That the judge or magistrate is related to either party by consanguinity or affinity within the third degree, computed according to the rules of law.

3. That the judge or magistrate has been attorney or counsel for any party in the action or proceeding.

4. That the judge or magistrate is biased or prejudiced for or against any party or the case in the action.

(B) Motion for Disqualification. Any such disqualification for cause shall be made by a motion to disqualify accompanied by an affidavit of the party or the party's attorney stating distinctly the grounds upon which disqualification is based and the facts relied upon in support of the motion. Such motion for disqualification for cause may be made at any time. The presiding judge or magistrate sought to be disqualified shall grant or deny the

ORDER DENYING MOTION TO DISQUALIFY

PAGE - 1

Mitchell v. Simpson, et al.,

CV-2012-4124-OC

Lamm v. State, 143 Idaho 763, 765, 152 P.3d 634, 636 (Idaho Ct. App. 1998). The Court also notes the Plaintiff has not requested a hearing on this matter.

A decision regarding a motion to disqualify for bias or prejudice under IRCP 40(d)(2) is committed to the sound discretion of the trial court. *Id.*(citing *State v. Pratt*, 128 Idaho 207, 211, 912 P.2d 94, 98 (1996)).

DISCUSSION

Rule 40(d)(2)(A) sets forth a number of grounds for the disqualification of a judge. Pertinent to this action is subsection (3), which provides that any party to an action may disqualify a judge when the judge “has been attorney or counsel for any party in the action or proceeding.” In addition, “[t]he Idaho Code of Judicial Conduct requires a judge to disqualify himself in a case where he served as a lawyer in the matter in controversy. Idaho Code Jud. Conduct, Canon 3E(1)(b).” *City of Coeur d'Alene v. Simpson*, 142 Idaho 839, 844, 136 P.3d 310, 315 (2006).

Pursuant to his motion, the Plaintiff argues for disqualification under IRCP 40(d)(2)(A)(3), arguing the Judge has been attorney or counsel for any party. (Aff. of Ryan Mitchell, 1-2, Sept. 13, 2013.) This claim is based upon the Judge’s employment as a Deputy Attorney General from June 1, 2000, until January 30, 2004. During that period of employment, the Plaintiff contends the Judge also acted as counsel for the Idaho Department of Health and Welfare, District VI, and State Hospital South. (*Id.*) The Plaintiff suggests that since the Court has served as legal counsel in the past for the Idaho Department of Health and Welfare and State Hospital South that the Court cannot now preside over a case that involves the State of Idaho or

motion for disqualification upon notice and hearing in the manner prescribed by these rules for motions.

ORDER DENYING MOTION TO DISQUALIFY

PAGE - 2

Mitchell v. Simpson, et al.,

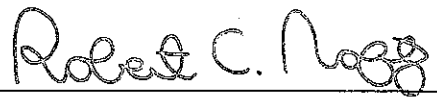
CV-2012-4124-OC

its executive agencies. However, that argument has been previously rejected, with the Idaho Supreme Court finding that application of such a rule “would force many members of the judiciary out of cases where their former employers were parties, regardless of whether the judge was a lawyer in the particular proceeding.” *Id.* Such a “per-se rule with this result is unnecessary and patently unworkable.” *Id.* For example, the *Simpson* court pointed out that “[a] former state attorney general, serving on this Court, would be disqualified from any appeal involving the State.” *Id.* As such, “Rule 40(d)(2)(A)(3) must be read together with Canon 3 E(1)(b) of the Code of Judicial Conduct, requiring disqualification *only* where the judge has served the former client in the matter in controversy.” *Id.* (emphasis added).

Thus, based upon the preceding discussion, and after careful review of the Plaintiff’s motion, memorandum, and affidavit in support of disqualification, the Court is not persuaded that disqualification is warranted. Under the pertinent case law, as well as based upon IRCP 40(d)(2)(A)(3) and Canon 3E(1)(b) of the Code of Judicial Conduct, there is nothing to suggest that this Court represented a former client in the matter in controversy. THEREFORE, the Court hereby **DENIES** the Plaintiff’s Motion to Disqualify Court for Cause.

IT IS SO ORDERED.

DATED this 19 day of September, 2013.



ROBERT C. NAFTZ
District Judge

Copies to:

William L. Mauk/Briane Nelson Mitchell (Attorneys for Plaintiff)
Thomas B. High/Bren E. Mollerup (Attorneys for Defendants)

Thomas B. High, ISB No. 2430
 Bren E. Mollerup, ISB No. 7959
 BENOIT, ALEXANDER,
 HARWOOD & HIGH, L.L.P.
 126 Second Avenue North
 P.O. Box 366
 Twin Falls, Idaho 83303-0366
 Telephone: (208) 733-5463
 Fax: (208) 734-1438
 Email: high@benoitlaw.com
 Email: mollerup@benoitlaw.com
 Attorneys for Defendant State of Idaho
 (16105\Memo in Res to Plain Motion to Disqualify for Cause\BEM\ka)

FILED
 BANNOCK COUNTY
 CLERK OF THE COURT
 2018 SEP 23 PM 12:10
 BY DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RYAN M. MITCHELL,

Plaintiff,

v.

GERALD DURK SIMPSON, an individual,
 STATE OF IDAHO, a governmental entity,
 and BANNOCK COUNTY, IDAHO, a
 political subdivision, SUSAN SIMPSON, as
 Conservator and Guardian of Gerald Durk
 Simpson, and DOES 1-25,

Defendants.

Case No. CV-12-4124-OC

**MEMORANDUM IN RESPONSE
 TO PLAINTIFF RYAN M.
 MITCHELL'S MOTION TO
 DISQUALIFY FOR CAUSE
 PURSUANT TO IRCP 40(d)(2)**

COMES NOW the above-entitled Defendant, State of Idaho, by and through its attorney of record, Benoit, Alexander, Harwood & High, LLP, and submits this Memorandum in Response to Plaintiff Ryan M. Mitchell's Motion to Disqualify for Cause.

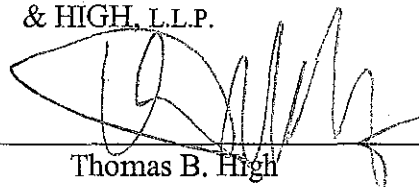
MEMORANDUM IN RESPONSE TO PLAINTIFF RYAN M. MITCHELL'S
 MOTION TO DISQUALIFY FOR CAUSE PURSUANT TO IRCP 40(d)(2) - 1

The State of Idaho admits the facts as stated by Mr. Mitchell in his Motion regarding the prior employment of Judge Naftz are correct to the best of its knowledge. However, the State would note that whether or not a Judge must be disqualified for cause is a matter of discretion. Accordingly, it is the State's position that Judge Naftz is in the best position to evaluate his ability to effectively serve in this case and defers to his judgment.

DATED this 20th day of September, 2013.

BENOIT, ALEXANDER, HARWOOD
& HIGH, L.L.P.

By



Thomas B. High
Attorneys for Defendant State of Idaho

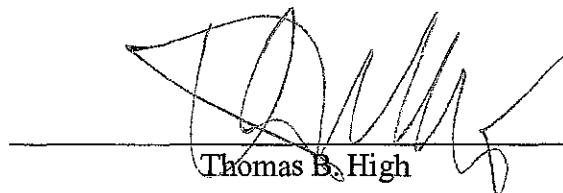
CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 20th day of September, 2013, he caused a true and correct copy of the **MEMORANDUM IN RESPONSE TO PLAINTIFF RYAN M. MITCHELL'S MOTION TO DISQUALIFY FOR CAUSE PURSUANT TO IRCP 40(d)(2)** to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743
(Attorneys for Plaintiff)

Hand Delivered
U.S. Mail
Fax
Fed. Express

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<input type="checkbox"/>
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Thomas B. High

MEMORANDUM IN RESPONSE TO PLAINTIFF RYAN M. MITCHELL'S
MOTION TO DISQUALIFY FOR CAUSE PURSUANT TO IRCP 40(d)(2) - 2

Thomas B. High, ISB No. 2430
 Bren E. Mollerup, ISB No. 7959
 BENOIT, ALEXANDER,
 HARWOOD & HIGH, L.L.P.
 126 Second Avenue North
 P.O. Box 366
 Twin Falls, Idaho 83303-0366
 Telephone: (208) 733-5463
 Fax: (208) 734-1438
 Email: high@benoitlaw.com
 Email: mollerup@benoitlaw.com
 Attorneys for Defendant State of Idaho
 (16105\Notice of Withdrawal of Motion for Protective Order\BEM\ka)

FILED
 BANNOCK COUNTY
 CLERK OF THE COURT

2013 OCT 23 AM 10:44

BY [Signature]
 DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RYAN M. MITCHELL,

Plaintiff,

v.

GERALD DURK SIMPSON, an individual,
 STATE OF IDAHO, a governmental entity,
 and BANNOCK COUNTY, IDAHO, a
 political subdivision, SUSAN SIMPSON, as
 Conservator and Guardian of Gerald Durk
 Simpson, and DOES 1-25,

Defendants.

Case No. CV-12-4124-OC

**NOTICE OF WITHDRAWAL OF
 MOTION FOR PROTECTIVE
 ORDER**

COMES NOW the Defendant, State of Idaho, and herewith withdraws its Motion for
 Protective Order filed with the Court on July 29, 2013.

NOTICE OF WITHDRAWAL OF MOTION FOR PROTECTIVE ORDER - 1

Dum

DATED this 21st day of October, 2013.

BENOIT, ALEXANDER, HARWOOD
& HIGH, L.L.P.

By



Bren E. Mollerup

Attorneys for Defendant State of Idaho

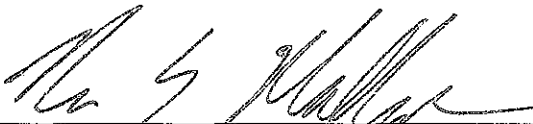
CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 21st day of October, 2013, he caused a true and correct copy of the **NOTICE OF WITHDRAWAL OF MOTION FOR PROTECTIVE ORDER** to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743
(Attorneys for Plaintiff)

Hand Delivered
U.S. Mail
Fax
Fed. Express

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<input type="checkbox"/>
<input type="checkbox"/>



Bren E. Mollerup

Thomas B. High, ISB No. 2430
 Bren E. Mollerup, ISB No. 7959
 BENOIT, ALEXANDER,
 HARWOOD & HIGH, L.L.P.
 126 Second Avenue North
 P.O. Box 366
 Twin Falls, Idaho 83303-0366
 Telephone: (208) 733-5463
 Fax: (208) 734-1438
 Email: high@benoitlaw.com
 Email: mollerup@benoitlaw.com
 Attorneys for Defendant State of Idaho
 (16105\Ssummary Judgment\Amended Notice of Hearing\TBH\ka)

FILED
 BANNOCK COUNTY
 CLERK OF THE COURT
 2013 OCT 25 AM 11:20
 BY DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RYAN M. MITCHELL,

Plaintiff,

v.

GERALD DURK SIMPSON, an individual,
 STATE OF IDAHO, a governmental entity,
 and BANNOCK COUNTY, IDAHO, a
 political subdivision, SUSAN SIMPSON, as
 Conservator and Guardian of Gerald Durk
 Simpson, and DOES 1-25,

Defendants.

Case No. CV-12-4124-OC

AMENDED NOTICE OF HEARING

**(Defendant, State of Idaho's Motion
 for Summary Judgment)**

DATE: November 25, 2013

TIME: 2:30 p.m.

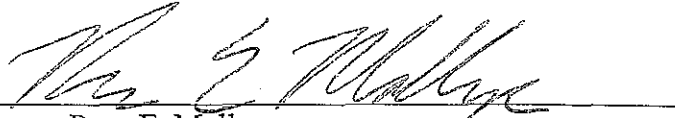
PLEASE TAKE NOTICE that on **Monday, the 25th day of November, 2013**, at the
hour of 2:30 o'clock p.m. of that day, or as soon thereafter as counsel can be heard, before the
 Honorable Robert C. Naftz at the above-named Court at the Courthouse, in the City of Pocatello,
AMENDED NOTICE OF HEARING - 1

County of Bannock, State of Idaho, the above-named Defendant, State of Idaho, will call up and present for disposition by the Court its **MOTION FOR SUMMARY JUDGMENT** previously filed with this Court.

DATED this 23rd day of October, 2013.

BENOIT, ALEXANDER, HARWOOD
& HIGH, L.L.P.

By



Bren E. Mollerup
Attorneys for Defendant State of Idaho

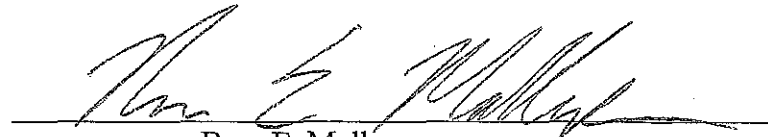
CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 23rd day of October, 2013, he caused a true and correct copy of the **AMENDED NOTICE OF HEARING** to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743
(Attorneys for Plaintiff)

Hand Delivered
U.S. Mail
Fax
Fed. Express

<input type="checkbox"/>
<input checked="" type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>



Bren E. Mollerup

ORIGINAL

FILED
BANNOCK COUNTY
CLERK OF THE COURT

WILLIAM L. MAUK (ISB #1825)
BRIANE NELSON MITCHELL (ISB #2346)
MAUK & BURGOYNE
515 South 6th Street
Post Office Box 1743
Boise, Idaho 83701-1743
Telephone: (208) 345-2654
Facsimile (208) 345-3319
nels@maukburgoyne.com

2013 OCT 28 AM 11:31

BY  DEPUTY CLERK

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

RYAN M. MITCHELL,

Plaintiff,

vs.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity, and
BANNOCK COUNTY, IDAHO, a political
subdivision, SUSAN SIMPSON, as
Conservator and Guardian of Gerald Durk
Simpson, and DOES 1-25,

Defendants.

Case No. CV 12-4124 OC

NOTICE OF HEARING

(Plaintiff's Motion to Compel)

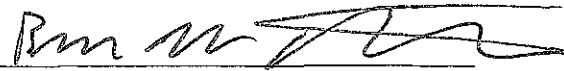
DATE: November 25, 2013

TIME: 2:30 p.m.

PLEASE TAKE NOTICE that on **Monday, the 25th day of November, 2013**, at the **hour of 2:30 o'clock p.m.** of that day, or as soon thereafter as counsel can be heard, before the Honorable Robert C. Naftz at the above-named Court at the Courthouse, in the City of Pocatello, County of Bannock, State of Idaho, the above-named Plaintiff will call up and present for disposition by the Court his **MOTION TO COMPEL** previously filed with this Court.

DATED this 25th day of October, 2013.

MAUK & BURGOYNE

By 
Briane Nelson Mitchell, of the Firm,
Attorneys for Plaintiff

NOTICE OF HEARING - 1

Robert C. Naftz

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of October, 2013, I caused a true and correct copy of the above and foregoing instrument to be served upon the following individuals in the manner indicated below:

Susan Simpson
765 Channing Ave.
Palo Alto, CA 94301
ssimpsonbv@gmail.com

☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

*As Conservator and Guardian of
Gerald Durk Simpson*

Thomas B. High
Bren E. Mollerup
Benoit, Alexander, Harwood & High, LLP
126 Second Avenue North
P.O. Box 366
Twin Falls, ID 83303-0366

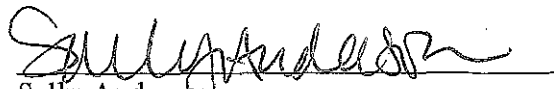
☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

Attorneys for Defendant State of Idaho

Ian N. Service
Bannock County Prosecutor's Office
624 E Center
P.O. Box P
Pocatello, ID 83201

☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

Attorneys for Defendant Bannock County


Sally Anderson,
Assistant to Briane Nelson Mitchell

FILED
BARNSTOCK COUNTY
CLERK OF THE COURT
2019 NOV 18 AM 10:28
BY *CW*
DEPUTY CLERK

(16105\Discovery\Notice of Service (2nd Supp Res to Plain 1st Set of Doc Req to Def - 3rd Supp Ans to Plain 1st Set of Interrogs to Def - 2nd Supple Privilege & Statutory Exemption Log)\TBH\ka)

* * * * *

NOTICE OF SERVICE OF DISCOVERY DOCUMENTS

* * * * *

NOTICE OF SERVICE OF DISCOVERY DOCUMENTS - 1

1. **Third Supplemental Answers to Plaintiff's First Set of Interrogatories to Defendant State of Idaho;**
2. **Second Supplemental Responses to Plaintiff's First Set of Document Requests to Defendant State of Idaho; and**
3. **Second Supplemental Privilege and Statutory Exemption Log**

were served upon the following attorneys for the Plaintiff, by placing the same in the U.S. mail with postage prepaid thereon to:

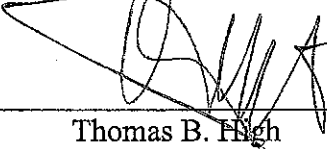
William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743

The original documents are being sent to Plaintiff's counsel to be retained in their file.

DATED this 14th day of November, 2013.

BENOIT, ALEXANDER, HARWOOD
& HIGH, LLP.

By


Thomas B. High
Attorneys for Defendant State of Idaho

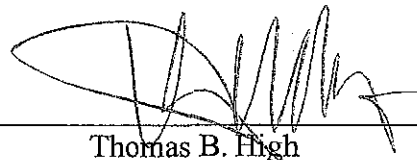
CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 14th day of November, 2013, he caused a true and correct copy of the NOTICE OF SERVICE OF DISCOVERY DOCUMENTS to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743
(Attorneys for Plaintiff)

Hand Delivered
U.S. Mail
Fax
Fed. Express

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Thomas B. High

ORIGINAL

FILED
BANNOCK COUNTY
CLERK OF THE COURT
2013 NOV 21 PM 2:47
BY CW
DEPUTY CLERK

WILLIAM L. MAUK (ISB #1825)
BRIANE NELSON MITCHELL (ISB #2346)
MAUK & BURGOYNE
515 South 6th Street
Post Office Box 1743
Boise, Idaho 83701-1743
Telephone: (208) 345-2654
Facsimile (208) 345-3319
nels@maukburgoyne.com

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

RYAN M. MITCHELL,

Plaintiff,

vs.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity, and
BANNOCK COUNTY, IDAHO, a political
subdivision, SUSAN SIMPSON, as
Conservator and Guardian of Gerald Durk
Simpson, and DOES 1-25,

Defendants.

Case No. CV 12-4124 OC

**AFFIDAVIT OF RYAN M.
MITCHELL IN SUPPORT OF
DAMAGE DETERMINATION**

STATE OF Tennessee

: ss.

County of Hamilton

I, Ryan M. Mitchell, being first duly sworn upon oath, depose and say:

1. I am the Plaintiff and have personal knowledge of the facts set forth in this Affidavit.

2. I moved from Idaho Falls to Pocatello over the weekend of September 25-26, 2010. On September 27, 2010, I took the bus from Pocatello to my job as an engineer at INEL,

AFFIDAVIT OF RYAN M. MITCHELL IN SUPPORT OF DAMAGE DETERMINATION - 1

and returned by bus to Pocatello. That evening, I went for a run on the City Creek trail system in Pocatello and then went to the Mocha Madness Coffee Shop that is located at 546 South 6th Street in Pocatello so that I could access the internet.

3. I left the coffee shop and as I was in the process of starting my motorcycle, I suddenly heard a fire cracker noise behind me and I felt a sharp pain in my back.

4. I then stumbled back into the coffee shop, calling 911 I uttered a few words then began spitting up blood. I remember feeling my shock at the pain, and being overwhelmed with fear and the feeling that something was very wrong. There was a sensation of internal warmth coming across my chest. I collapsed in a corner of the coffee shop.

5. As I lay in a corner of Mocha Madness I remember other patrons telling me to be calm as I was writhing with the inability to breathe. I remember someone making sure that I did not try to get up and telling me to stay as calm as possible. A cold compress was placed onto my back. Once emergency personnel arrived they directed everyone else to get out of the way and leave the area where I was laying.

6. I remember having a lot of trouble breathing, and that blood kept coming out of my mouth. According to the medical records that I have been given by Portneuf Medical Center, I was admitted to triage at Portneuf at 10:18 p.m. The initial assessment states:

Patient brought to ED [Emergency Department] for evaluations of GSW [gun shot wound] to the left posterior upper chest. Patient is on right side, moaning in pain and coughing up blood.

During my first hour at Portneuf, I was given five pints of blood using a Rapid infuser.

7. Dr. Jacob DeLarosa, a thoracic surgeon, began treating me shortly after my admission to Portneuf. His note stated that:

AFFIDAVIT OF RYAN M. MITCHELL IN SUPPORT OF DAMAGE DETERMINATION - 2

This is 25-year-old male who presented to the Emergency Department after suffering a gunshot wound to his chest. A tube thoracostomy was placed and approximately 2 liters of blood was drained from the pleural space. The patient was stabilized and taken to the CT scanner which showed a large hematoma [collection of blood confined within a space in the body] as well as a questionable shadowing at the descending aorta. In the CT scanner, the patient continued to bleed and bled approximately another 1.5L. Given this, it was elected to take the patient emergently to the operating room for exploratory thoracotomy [cutting into the chest wall].

8. A CT scan of my chest was performed finding that:

Bullet pathway passes through the region of the central vasculature and infrahilar region. This is seen as passing in close proximity to several enhancing vessels.

The radiology report, prepared by Dr. L. Chris Bachman, also noted that:

Fracture involving the left posterior 10th and anterior left 4th ribs. Metallic bullet is seen in the soft tissues anteriorly just below the skin surface in the left anterior chest wall.

In addition, the radiology report stated that:

1. Left chest gunshot wound with cord like hematoma traversing the left lower and left upper/lingular lobes with internal parenchymal hematoma [collection of blood in the lung] and adjacent infiltrate and shrapnel.
2. Patchy infiltrates, most pronounced in the left lung and right upper lobe. Consolidation and atelectasis [collapsing] in the dependent lung.
3. Left pleural effusion and pneumothorax [wound causing air to escape and lung to collapse].
4. Extensive subcutaneous emphysema [air under the skin introduced by trauma].
5. Aortic wall thickening involving the posterolateral distal transverse arch and proximal posterior and lateral descending

thoracic aorta. Differential considerations include motion artifact or aortic injury/mural hematoma or intimal flap. Several areas seen more distally have a similar, although not as extensive appearance in the descending thoracic aorta.

6. Mediastinal hematoma and subcutaneous and pneumomediastinum [escape of blood into the space between the two lungs where the heart is located].

9. After performing the emergency surgery, Dr. DeLarosa prepared notes that state, in part, that:

An informed consent was not obtained, as the patient was taken emergently to the operating room and there was no family. He was intubated, placed in the right lateral decubitus position, left side up. He was prepped and draped in the standard surgical fashion. A posterolateral thoracotomy was then done in the fifth interspace, this was carried into the chest, and a large hematoma was identified. This was evacuated. Lap sponges were placed in the pleural space. Systemically the pleural space was then evaluated, the arch, descending aorta, as well as the super diaphragmatic aorta. ... Attention was then turned to the left lower lobe were [sic] there was a projectile injury. This was repaired using 3-0 chromic gut suture. There was an exit wound in the left upper lobe in the area of lingula. This was also repaired using a 3-0 chromic gut suture. Attention was then turned to the posterior wall where there was an abundance of blood and this was actively bleeding. This was at the entry site and the intercostal artery was injured. This was pulsatile bleeding. This was ligated using a 2-0 Vicryl suture. Once the bleeding had stopped, attention was turned to the anterior portion of the chest where an exit wound was identified. There was no active bleeding in this area. There was no projectile that was identified. There were no more areas of any bleeding in the chest and it was elected to proceed with closing.

10. On September 29, 2010, I was transferred to Saint Alphonsus Hospital in Boise by air ambulance. Saint Alphonsus is a Type II trauma center and it is located in Boise where my parents, grandmother, and other family live.

11. On October 1, 2010, I had another surgery to remove the bullet from my chest.

The Saint Alphonsus records state that:

A small incision was made just above the nipple, however, the slug started to migrate back into the pectoral muscle, but after incision in through the fascia, we were able to easily use a tonsil and grabbed the slug and pulled it out. The wound was then carefully irrigated with saline and with antibiotic irrigation and was clean and all foreign body was removed. This was then handed the circulating nurse for chain of evidence and delivered to the Boise Police Department. The incision was closed with vertical mattress Prolene sutures and a dressing was placed.

12. I was released from the hospital during the first week of October. I continued to have significant pain in my left arm, shoulder and back, as well as involuntary spasms in my left arm. I initially stayed in my parents' home after the discharge, but moved back to Pocatello on October 15, 2010 with the assistance of my parents.

13. After returning to Pocatello, I began therapy at the Idaho Orthopaedic and Sports Clinic. I went to therapy 2-3 times per week for two months. The physical therapist recognized I was going through a lot of pain to release scar tissue associated with the wound which required increased physical effort to remove. Even with the therapy I continued to have significant pain in my shoulder, and continued to have cramps and spasms on my left side, and difficulty raising my left arm. In addition, there was an abnormal bulging in the muscle around my shoulder and back, which is composed of scar tissue.

14. In December, I was referred to specialists at the University of Utah in Salt Lake City. I saw Dr. Robert Burke, who is a Professor in the Department of Orthopaedics, and Dr. Jolene Clark. They told me that my latissimus and/or serratus muscles on my left side are detached. They also confirmed that I had a firm nodule near the end of the surgical incision on

my back. The University of Utah doctors told me that they did not know of a surgical procedure that could repair my shoulder.

15. In January 2011, I travelled to Virginia Mason Medical Center in Seattle because of the continuing pain and problems with my left shoulder. I was evaluated by Dr. Lyle Sorenson, a surgeon, as well as by Dr. Koehler in thoracic surgery, Dr. Beghlian in plastic surgery, Dr. Ravits in neurology, and Dr. Stoilova in neurology. They examined the "winging" of my muscles around the scapula, and the abnormal bulge associated with the latissimus. The Virginia Mason doctors told me that further surgery "would not be effective or hold given the friability of muscle" in the problem area.

17. My mother, Nancy Mitchell, helped track and organize all of the medical bills caused by the shooting. A summary of all of the medical costs is set forth below:

Rocky Mountain Emergency Physicians	\$974.00
Portneuf Medical Practices (DeLaRosa)	\$10,419.00
Portneuf Medical Center	\$259.00
Portneuf Medical Center	\$214.00
Gem State Radiology	\$182.60
Idaho Sports Medicine Institute	\$515.00
Idaho Orthopaedic & Sports Clinic	\$234.00
Idaho Orthopaedic & Sports Clinic	\$213.00
Idaho Orthopaedic & Sports Clinic	\$153.00
Core Physical Therapy Center for Orthopaedics	\$2,130.00

St. Alphonsus RMC	\$18,662.47
Bannock Ambulance	\$790.00
ADA-BOI Critical Care	\$645.00
Boise Anesthesia PA	\$612.00
Portneuf Medical Center	\$1,249.00
St. Luke's Cardiothoracic & Vascular	\$922.00
Portneuf Medical Center	\$48,001.31
Portneuf Medical Center (Ambulance)	\$10,364.00
Portneuf Medical Center	\$218.00
Portneuf Medical Center	\$211.00
Portneuf Medical Center	\$229.00
Portneuf Medical Center	\$30.00
Portneuf Medical Center	\$60.00
Virginia Mason Med Center	\$3,605.00
University of Utah Health Care	\$140.00
TOTAL:	\$101,032.38

16. It has been more than three years since I was shot, and I continue to have involuntary spasms in my left arm. My range of motion on my left side continues to be limited, interfering with climbing activities, and any abduction-type movement of my left arm (like doing a pull-up). It is difficult to sustain breathing when I am swimming. I also experience spasms in my left abdominal area.

AFFIDAVIT OF RYAN M. MITCHELL IN SUPPORT OF DAMAGE DETERMINATION - 7

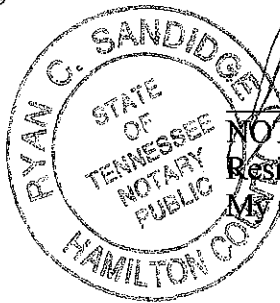
Dated this 15 day of November, 2013.


Ryan M. Mitchell

MT DL 0702519854125

EXP 7/25/14

SUBSCRIBED AND SWORN to before me, the undersigned Notary in and for said State, this 15th day of November, 2013.




NOTARY PUBLIC For Tennessee
Residing at Hamilton Co. therein.
My Commission expires July 9, 2014

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th of November, 2013, I caused a true and correct copy of the above and foregoing instrument to be served upon the following individuals in the manner indicated below:

Susan Simpson
765 Channing Ave.
Palo Alto, CA 94301
ssimpsonbv@gmail.com

☒ U.S. Mail
☐ Facsimile
☒ Email
☐ Hand Delivery

*As Conservator and Guardian of
Gerald Durk Simpson*

Thomas B. High
Bren E. Mollerup
Benoit, Alexander, Harwood & High, LLP
126 Second Avenue North
P.O. Box 366
Twin Falls, ID 83303-0366

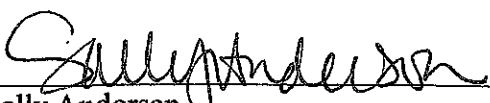
☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

Attorneys for Defendant State of Idaho

Ian N. Service
Bannock County Prosecutor's Office
624 E Center
P.O. Box P
Pocatello, ID 83201

☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

Attorneys for Defendant Bannock County


Sally Anderson,
Assistant to Briane Nelson Mitchell

ORIGINAL

WILLIAM L. MAUK (ISB #1825)
BRIANE NELSON MITCHELL (ISB #2346)
MAUK & BURGOYNE
515 South 6th Street
Post Office Box 1743
Boise, Idaho 83701-1743
Telephone: (208) 345-2654
Facsimile (208) 345-3319
nels@maukburgoyne.com

Attorneys for Plaintiff

FILED
BANNOCK COUNTY
CLERK OF THE COURT

2013 NOV 21 PM 2:47

BY *[Signature]*
DEPUTY CLERK

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

RYAN M. MITCHELL,

Plaintiff,

vs.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity, and
BANNOCK COUNTY, IDAHO, a political
subdivision, SUSAN SIMPSON, as
Conservator and Guardian of Gerald Durk
Simpson, and DOES 1-25,

Defendants.

Case No. CV 12-4124 OC

**APPLICATION FOR ENTRY
OF DAMAGE AWARD IN
CONNECTION WITH DEFAULT
JUDGMENT AGAINST DEFENDANT
GERALD DURK SIMPSON AND
DEFENDANT SUSAN SIMPSON AS
CONSERVATOR/ GUARDIAN FOR
GERALD DURK SIMPSON**

COMES NOW The Plaintiff, Ryan M. Mitchell, by and through his attorneys, and applies to the Court for entry of a damage award in connection with the default judgment previously entered, pursuant to IRCP 55, against Defendant Gerald Durk Simpson ("Simpson") and Defendant Susan Simpson as Conservator/Guardian for Gerald Durk Simpson.

1. On July 26, 2013, this Court entered a Default Judgment:

Defendants Gerald Durk Simpson and Susan Simpson as
Conservator/Guardian of Gerald Durk Simpson were served with

**APPLICATION FOR ENTRY OF DAMAGE AWARD IN CONNECTION WITH DEFAULT JUDGMENT
AGAINST DEFENDANT GERALD DURK SIMPSON AND DEFENDANT SUSAN SIMPSON AS
CONSERVATOR/ GUARDIAN FOR GERALD DURK SIMPSON - 1**

the First Amended Complaint and have failed to plead or otherwise defend within the time allowed.

THEREFORE, a default is entered against Defendants (Gerald Durk Simpson and Susan Simpson as Conservator/Guardian of Gerald Durk Simpson) on the Third [Assault and Battery] and Fourth [Negligence] Causes of Action in the First Amended Complaint.

IT IS FURTHER ORDERED that Plaintiff shall be allowed to submit evidence from which the Court can determine the amount of damages, as well as the fees and costs, that shall be awarded as part of this Default Judgment pursuant to IRCP 55(b)(2) and I.C. 5-336.

2. With the current Application, Plaintiff Ryan M. Mitchell requests determination and entry of a damage award in connection with the default judgment previously entered against Defendant Gerald Durk Simpson and Defendant Susan Simpson as Conservator/Guardian for Gerald Durk Simpson. Submitted with this Application is the Affidavit of Ryan M. Mitchell in support of Damage Determination ("Ryan Mitchell Aff.") as well as a proposed Judgment including the damage award.

3. On the night of September 27, 2010, Ryan Mitchell was shot in the back and the bullet fractured the left posterior tenth and anterior fourth ribs. (Ryan Mitchell Aff., ¶ 8.) Emergency surgery was performed by Dr. DeLarosa at Portneuf Medical Center. (*Id.*, ¶ 9.) Ryan Mitchell was given five pints of blood during his first hour at Portneuf. (*Id.*, ¶ 6.)

4. The Pocatello Police arrested Defendant Gerald Durk Simpson on September 28, 2010. (*Id.*) Simpson was charged with Aggravated Battery (I.C. §§ 18-903(a), 18-907(1)(a) & (b)) with a deadly weapon (I.C. § 19-2520):

**APPLICATION FOR ENTRY OF DAMAGE AWARD IN CONNECTION WITH DEFAULT JUDGMENT
AGAINST DEFENDANT GERALD DURK SIMPSON AND DEFENDANT SUSAN SIMPSON AS
CONSERVATOR/ GUARDIAN FOR GERALD DURK SIMPSON - 2**

That the said GERALD DURK SIMPSON, in the County of Bannock, State of Idaho, on or about the 27th day of September, 2010, did willfully and unlawfully use force or violence upon the person of another, Ryan Mitchell, by either the use of a deadly weapon or instrument and/or causing great bodily harm or permanent disability or permanent disfigurement by shooting Ryan Mitchell in the back.

(A copy of the Criminal Complaint was filed with this Court as Exhibit 8 to the Affidavit of Sally Anderson in Support of Plaintiff's Opposition to State's Motion for Summary Judgment, dated July 26, 2013.)

5. As detailed in Ryan Mitchell's Affidavit, his medical bills have been \$101,032.38. Moreover, Ryan Mitchell's life was forever changed after he was shot in the back by Defendant Gerald Durk Simpson. He suffered enormous pain and discomfort, much of which continues three years later. The physical scarring will remain with Plaintiff the rest of his life, as will the emotional scarring. As further explained in his Affidavit, muscles in Ryan Mitchell's shoulder can never be re-attached and function in a normal fashion. This case warrants an award of damages for pain, suffering, emotional distress and disfigurement in the amount of \$303,097.14, which represents a 3x multiple of the medical bills. There is sufficient evidence in the record supporting the amount of damages requested by this Application.

6. Plaintiff Ryan Mitchell requests that a damage award be entered against Defendant Gerald Durk Simpson and Defendant Susan Simpson as Conservator/Guardian for Gerald Durk Simpson for the full amount of Plaintiff's medical bills (\$101,032.38) plus non-economic damages (\$303,097.14) for a total of \$404,129.52. In addition, Plaintiff requests that the court exercise its discretion and double the amount of damages, pursuant to Idaho Code

**APPLICATION FOR ENTRY OF DAMAGE AWARD IN CONNECTION WITH DEFAULT JUDGMENT
AGAINST DEFENDANT GERALD DURK SIMPSON AND DEFENDANT SUSAN SIMPSON AS
CONSERVATOR/ GUARDIAN FOR GERALD DURK SIMPSON - 3**

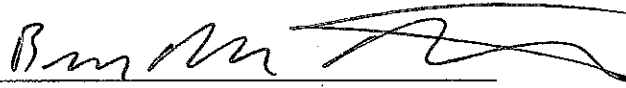
Section 18-3307, so that the final award against Defendant Gerald Durk Simpson and Defendant Susan Simpson as Conservator/Guardian for Gerald Durk Simpson is for \$808,259.04. A copy of the Proposed Judgment is attached to this Application.

7. Concurrently with this filing of this Application, Counsel for Plaintiff has served these papers on Gerald Durk Simpson through his Conservator/Guardian Susan Simpson at 765 Channing Avenue, Palo Alto, CA 94301 and emailed them to the Conservator/Guardian's email address at ssimpsonbv@gmail.com.

Dated this 20th day of November, 2013.

Respectfully submitted,

MAUK & BURGOYNE

By 
Briane Nelson Mitchell, of the Firm,
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of November, 2013, I caused a true and correct copy of the above and foregoing instrument to be served upon the following individuals in the manner indicated below:

Susan Simpson
765 Channing Ave.
Palo Alto, CA 94301
ssimpsonbv@gmail.com

☒ U.S. Mail
☐ Facsimile
☒ Email
☐ Hand Delivery

*As Conservator and Guardian of
Gerald Durk Simpson*

Thomas B. High
Bren E. Mollerup
Benoit, Alexander, Harwood & High, LLP
126 Second Avenue North
P.O. Box 366
Twin Falls, ID 83303-0366

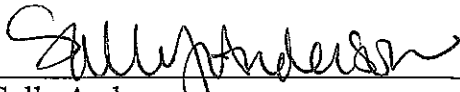
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Attorneys for Defendant State of Idaho

Ian N. Service
Bannock County Prosecutor's Office
624 E Center
P.O. Box P
Pocatello, ID 83201

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☐ Hand Delivery

Attorneys for Defendant Bannock County



Sally Anderson
Assistant to Briane Nelson Mitchell

APPLICATION FOR ENTRY OF DAMAGE AWARD IN CONNECTION WITH DEFAULT JUDGMENT
AGAINST DEFENDANT GERALD DURK SIMPSON AND DEFENDANT SUSAN SIMPSON AS
CONSERVATOR/ GUARDIAN FOR GERALD DURK SIMPSON - 5

COURT MINUTES

CV-2012-0004124-OC

Ryan M. Mitchell vs. Gerald Durk Simpson, etal.

Hearing type: Motion to Compel/Summary Judgment

Hearing date: 11/25/2013

Time: 2:31 pm

Judge: Robert C Naftz

Courtroom: 309

Court reporter: Stephanie Davis

Minutes Clerk: Nicole Deloach

Tape Number:

Party: Ryan Mitchell, Attorney: Nels Mitchell

Party: State of Idaho, Attorney: Thomas High

2:32 Plaintiff's Motion to Compel; Motion for Summary Judgment filed by Defendant (State of Idaho);

Court - just provided memorandum in support of; affidavit and Notice of Judicial Notice

Mitchell - argument on Motion to Compel; did not receive defendant's response to Motion to Compel; most issues were not resolved; ongoing discussions but state did not supplement responses until last week; received disc with 6000 pages of information; supplemental responses still do not answer questions as subject of motion to compel; still mystery as to what documents state withholding; still at issue: No. 2 and 10; all documents relating to communication that discuss release or potential release of simpson and release of simpson from state custody; documents under HIPPA and under state disclosure law; their response doesn't respond to question asked; seeking information about state's plan to have released; plan started in spring 2012; new response is evasive; second category document 6 and 7; "no documents exist"; new responses are evasive; evasive should be treated as failure to answer; pre-

shooting and post-shooting documents; interrogatory 16 is next one; communication between IDHW and the court regarding release from custody; doesn't answer question; judge Carnaroli's decision to dismiss charges is not part of the record; interrogatory No. 17; how many times has state represented individual facing criminal charges and set up conservator/guardianship on their behalf?; response was that 32 proceedings since 2005 in region 6; asked to identify cases and refused to; entitled to having the state identify; violation of victim's rights statute and constitution; final area deals with second supplemental privilege law;

High - response; background information given; assumption that always trying to secure release of Defendant and dismiss criminal charge; Plaintiff rides on that assumption; state has to follow HIPPA law and did; state actively sought out Simpson's guardian and took time to convince her to give the state release to turn over 6000 pages of documents; had to go through documents and turned over everything on Simpson except for few documents identified under privilege law (attorney-client communications); No. 2 and 10; State did not seek release of Simpson from criminal charges; counsel doesn't like answer but in 6000 documents; 6 and 7 - propensity for violence; state doesn't believe propensity for violence; reference to 6 documents that make statement threatening to kill or commit suicide when Simpson 16 years old and first brought to Health & Welfare;

Court - what are these documents

High - start with first contact with Simpson from 70s; has been hospitalized on several occasions but never dealt with violence until post shooting;

Court - finding?

High - gravely disabled but not danger to himself or others

Court - post shooting; issue or something brought by defense counsel that Simpson was not capable of proceeding in state action of restoration;

High - did initial time (90 days); at end, did second 90 days of evaluation; upon completion of evaluation, medical record was sent to magistrate judge; report was about competence to assist in criminal proceeding; magistrate judge dismissed charge; only documents not produced - attorney-client communications outlined in privileged report; objection seems to be that they need to tell him the content of the communication for them to determine privileged or not privileged; second set of documents not produced -

identification and underlying documents of 32 other individuals that state has sought to have guardianship/conservatorship appointed

Court – did all 32 have criminal pending charges

High – 6th judicial district from 2005 to present; those types of cases are civil in nature; no victim in these cases; identity of these individuals are confidential and protected by code; no bearing on this case; irrelevant; everything else provided but those two bits of information;

Mitchell – final comments; why did state change call of question?; Def. never transported back to Bannock County after released from State's custody;

Court – questions to counsel;

Mitchell – final comments; court might want to review privileged documents to review if attorney/client privileged documents; just ask state to identify names of 32 other proceedings (conservator/guardianship and pending criminal proceeding);

High – argument on summary judgment; simpson shot ryan Mitchell in back; Mitchell was innocent; at one time under care of health and welfare; at time of shooting, was not in their custody; 6-23-10 released about three months before incident; 2009 and 2010 H & W budget was cut; simpson was cut from state program because of lack of funding; discretionary decision made by H & W; others had more need than simpson to receive funding; threefold action by Plaintiff; bootstrap claim for damages (negligence) for ceasing supervision; laws proclude that type of action; state did not bring the criminal case; responsibility was supervising simpson; that supervision ceased; discretionary function; immune; if was under supervision, state immune because requires malice or criminal intent to be liable; if accept that claim, anyone who ever comes into contact with H & W, state would be responsible for any incident by that individual; no evidence of malice or criminal intent by any state officer; information taken out of context but does not rise to malice or criminal intent;

Mitchell – response; affidavits are objectionable; not based on personal knowledge and should not be admitted; Traugbber and Sommer letters should not be considered; services provided by state to simpson for 35 years; they knew he was non-compliant; should be going to jury on pure negligence; their motion is premature; asking for declaratory judgment that Plaintiff's rights were violated and an injunction; additional points; enough evidence to show State was negligent

High - final comments; no negligence on behalf of state; not acting with malice or criminal intent; this case is barred by Idaho legislature; not even supervising person; no cause of action under victim's rights; no claim; state is immune

Court - take both issues under advisement and enter written decisions; one question about double damages; how did come up with multiplier of 3 in regard to medical damages and pain and suffering for other Defendants and default documents

Mitchell - explanation; arbitrator for L.A. superior court; hearing P.I cases pro-bono; counsel used multiplier of 3

High - no bearing on State

Court - agree, this is in regard to other Defendants and not the state

WILLIAM L. MAUK (ISB #1825)
BRIANE NELSON MITCHELL (ISB #2346)
MAUK & BURGOYNE
515 South 6th Street
Post Office Box 1743
Boise, Idaho 83701-1743
Telephone: (208) 345-2654
Facsimile (208) 345-3319
nels@maukburgoyne.com

2013 NOV 25 10:11 AM
Cal

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

RYAN M. MITCHELL,
Plaintiff,

vs.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity, and
BANNOCK COUNTY, IDAHO, a political
subdivision, SUSAN SIMPSON, as
Conservator and Guardian of Gerald Durk
Simpson, and DOES 1-25,
Defendants.

Case No. CV 12-4124 OC

**SECOND AFFIDAVIT OF BRIANE
NELSON MITCHELL IN SUPPORT
OF MOTION TO COMPEL
DISCOVERY AGAINST THE
DEFENDANT
STATE OF IDAHO**

STATE OF IDAHO)
: ss.
County of Ada)

I, Briane Nelson Mitchell, being first duly sworn upon oath, depose and say:

1. I am one of the attorneys for Plaintiff, Ryan Mitchell, and have personal knowledge of the facts set forth in this Affidavit.

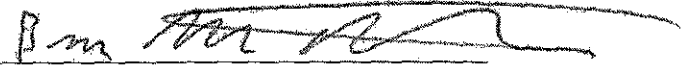
**SECOND AFFIDAVIT OF BRIANE NELSON MITCHELL IN SUPPORT OF MOTION TO COMPEL
DISCOVERY AGAINST DEFENDANT STATE OF IDAHO - 1**

2. Plaintiff's First Set of Interrogatories to Defendant State of Idaho, and Plaintiff's First Request for Documents to Defendant State of Idaho both contained the same definition of the phrase "relating to":

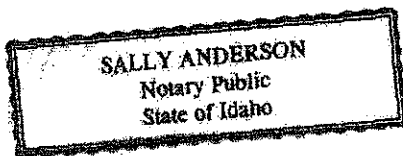
"Relate(s) to," "related to" or "relating to" means, in addition to its customary and usual meaning: of or concerning, pertaining to, consisting of, bearing upon, containing, describing, evidencing, constituting, reflecting, or having any logical or factual connection with the subject matter dealt with or alluded to in the request.


3. Attached as Exhibit A are true and correct copies of documents that were printed off of the disc that my office received from the State with its supplemental production on November 18, 2013.
4. Attached as Exhibit B is a true and correct copy of a document that was printed off of the disc that my office received from the State with its supplemental production on November 18, 2013 (a letter that the State sent to Judge Carnoli).

Dated this 25 day of November, 2013.


Briane Nelson Mitchell

SUBSCRIBED AND SWORN to before me, the undersigned Notary in and for said State, this 25 day of November, 2013.




NOTARY PUBLIC For Idaho
Residing at Boise, therein.
My Commission expires 4-24-18

SECOND AFFIDAVIT OF BRIANE NELSON MITCHELL IN SUPPORT OF MOTION TO COMPEL
DISCOVERY AGAINST DEFENDANT STATE OF IDAHO - 2

Information should be given by this to the following:

to be attached to and filed with:

Information should be given by this to the following:

Name of Officer: George William Thompson

Address: 271 Madison Ave.

Age: 34 Sex: Male

Group Name: NY State Police

Relationship to: George William Thompson

Name of Private P.D.: NY State Police

Last Visit to P.D.: 1964

Current Occupation: Police

Medical Problems: None

Describe the events (behavior or activities) or situation leading to need for Judicial Order Evaluation: While on duty, Thompson was involved in a traffic accident on 11/1/64.

Any special information such as previous behavior, social or family comments about social or pre-existing influences or causes should be noted:

Thompson is a police officer.

Purpose of Evaluation: NY State Police (Research)

Attach all source records and:

(a) Admission is to be made through health or police records.

(b) Daytime call health or police records (Health or Police records, or other records, or other records).

(c) Nighttime call health or police records.

(d) Weekend call health or police records.

EXHIBIT

A

STATE 00516

SIMPSON, D. DUK
HOSPITAL #18306

SOCIAL SERVICE CLINICAL NOTES

28 APR 1973 SOCIAL HISTORY

IDENTIFYING INFORMATION

Mr. Simpson is an 18-year-old Caucasian male who is currently single and resides with his mother in Reasnor, Hancock County.

Mr. Simpson was admitted to State Hospital South on 8 Apr 1973 on a third order petition from Paul W. Smith, Magistrate, Hancock Judicial District, Hancock County. The petition had been signed by his mother, Barbara Simpson. A hearing was held on 18 Apr 1973, and Mr. Simpson was not committed to State Hospital South for treatment but, at that time, he signed himself in as a voluntary patient.

INFORMANTS

Information in this social history was obtained from interviews with Mr. Simpson himself, with his mother, Mrs. Barbara Simpson, and William Smith, Paul Smith. Mr. Simpson was very cooperative and denied having any problems in the community. The information in the social history is considered questionable, as they relate to problem areas. The factual information is considered valid. The information from Mr. Simpson's mother and sister is considered somewhat questionable in the sense that they have tended to exaggerate the nature of Mr. Simpson's problem. There has been a great deal of hostility in the home, as will be described later, in this social history, and this tends to obscure their objectivity in giving information about Mr. Simpson.

PRESENTING PROBLEM

Mrs. Simpson states that Duk's problems have been ongoing for the last five years, since his father committed suicide. She has seen a number of different therapists, including Dr. Martin, psychiatrist in Reasnor, who have told her that Duk is not "schizophrenic," as she believes, and that he needs no medication in the home. Mrs. Simpson has been unwilling to accept that, and she has been unwilling to provide the type of discipline recommended, due to the negative attitude provoked by factors which will be discussed later. In the social history, Mr. Simpson has complete and total rule over the family home. His mother and sister fear him, and he rules the home through fear. One example of how they interact with him is in the kitchen and television in the home. If the female in the home are watching something on television and Mr. Simpson desires to watch something else, he will simply turn the channel. The females will then get up and leave the room, making no attempt to confront the situation. Mr. Simpson is allowed to purchase anything that he desires, no matter how expensive. Recently, in his attempts to control the situation in the home, he has become physically aggressive towards his mother. It was on the basis of this recent behavior that Susan talked her mother into signing a third order petition, and Mr. Simpson was brought to State Hospital South for evaluation.

BACKGROUND INFORMATION

Mrs. Simpson states that Duk's development during his early years was normal, and that he was easy to care for with no problems in the home. In a previous

STATE 00520

CONFIDENTIAL

UNIVERSITY OF CALIFORNIA

CONFIDENTIAL

PL 1200 commander then he is confronted with these A-10s and an attempt is made to get him to follow up treatment until he leaves the hospital.

A police report called the outcome of this own home investigation a male "bribees" who could serve as role model for him is recommended. It is unlikely that he will have been able to establish a good relationship with his mother or sisters.

John G. Owens, Age 8, 12
Owens, Robert, Worker, 1155 1/2

DISCUSSION

After some deliberation, Datta again moved out of his mother's home. He obtained employment in the bank and in the social and cultural board and room. He had a quarter of a box room away from his mother's home. This had not been a very happy

414 of 503

INFORMATION REQUESTED BY DISTRICT ATTORNEY

(to be attached to the local order)

INFORMATION NEEDED:

Full Name of Client: Bernice Marie Simpson

Address: 1389 Neal Avenue

City: LA State: California

Phone Number: 714-333-1111

Reference No.

Name of Provider: Dr. John M. Mahon

Date issued to you: 2/4/85

Current Medication: As prescribed by Dr. Mahon, 100 mg. of

Medical Problems:

Prescribing event (date and/or address) of the person having the need for Judicial Order medication: San Jose and the following in the state and county

Any criminal information such as previous convictions and/or current about alcohol or present drug intoxication or abuse, should be noted.

3 months ago, person voluntarily committed to hospital, alcohol and drug

Remarks or information: In testimony of medical records to your doctor

Attach all police reports etc.

(The admission must be made through local law enforcement - Sheriff's Dept.)

(a) Paymaster's name and address: Paymaster's name and address

(b) Date: 2/4/85

STATE 00574

now (as of now) is in custody of the police. He is in a hospital and others. He is in a hospital and others. He is in a hospital and others.

I think he has a personality change and that he is now. He became easily agitated, violent, unable to communicate or in touch with people. He was unable to understand things and spent long hours alone. He leaned on me for entertainment and became completely dependent on me.

I think he suffers to be in a group but cannot cope or communicate or interact with himself.

Does he have any idea of what is going on? What is the situation?

He had a reading or learning disability in grade school. I engaged a tutor who helped him finish high school with average grades. But I think his teachers had a lot of trouble.

Employment situation: what was his training and what type of employment did he receive? Did he receive any training? If so, what were the facts and what type of employment did he receive? Did he receive any training?

He received a Bachelor's degree from LSU in 1976. He is unable to hold any type of job for any length of time. He cannot tolerate people or pressure. To my knowledge he has not been hospitalized but possibly may be able to find where his illness can be controlled and compliance with treatment and taking his medication regularly can be met. I do not believe he will ever take medication or comply with procedures related to his illness. He likes to do so on his own.

Does he have any other problems? Does he have any other problems? Does he have any other problems?

None.

He seems to have a deep craving for affection, friends, particularly, etc. but is unable to do so. His remarks are inappropriate and he makes friends and family very uneasy.

In all honesty, it is his mother who cannot cope with this situation nor can his sisters, his relatives and all kind of advice but when it comes to actually doing something such as going to a psychiatrist with him, etc. at this point, none has offered. This has brought some resentment on my part toward the relatives but I understand they have their own family to care for. I guess I resent their advice or subtle hints as to what to do to the situation as much as anything. My feeling is the family is unable to physically do something then I feel their comments should be best left unsaid and let life go on. As this has been going on for some years now, I repeat that I feel Buck can only be stabilized on medication and proper counseling but this is going to have to be on him as he will not comply when left on his own and his condition will deteriorate to point where he is on will be a definite threat to himself and to others.

STATE 00633

PATIENT: SIMPSON, GERALD DIRK
SHS #: 18306
PROGRAM: Admissions Unit
DATE: 26 October 2010

PROBLEM NUMBER	PROBLEM NAME	DISCHARGE BARRIER	DATE ESTAB & STATUS	DATE CHANGED & NEW STATUS
1.0	Psychosis	Yes	26 October 2010 Active	
3.0	Dangerous to others and Gravely disabled	Yes	26 October 2010 Active	
7.0	Legal	Yes	26 October 2010 Active	

(Form SHS-0127C,R/04/98)(Addressograph)

SIMPSON, GERALD DIRK
18306

STATE 00738

Department of Health and Welfare
STATE HOSPITAL SOUTH
Blackfoot, Idaho

MASTER TREATMENT PLAN

MEDICAL RECORD

Progress Notes

NOTE DATED: 07/10/2012 11:33
LOCAL TITLE: LEGAL - REPORT TO THE COURT
ADMITTED: 04/27/2012 10:21 GAD SHS
July 10, 2012

Honorable Rick E. Carnaroli
Magistrate Judge
Bannock County Courthouse
624 E Center Room 220
Pocatello, Idaho 83201

RE: SIMPSON, GERALD DURK
SHS No: 18306
Court Case No: CR-2010-15926-FE

Dear Judge Carnaroli:

This letter is Idaho State Hospital South's report to the court on Gerald Durk Simpson as required by Idaho Code 18-212. Mr. Simpson was admitted to the Hospital for competency restoration treatment on April 27, 2012. It is understood that Mr. Simpson is a defendant in your court for felony aggravated battery and use of a deadly weapon in commission of a felony.

It is alleged, that on September 27, 2010, Mr. Simpson shot a man in the back when the man was leaving a coffee shop. Apparently, Mr. Simpson had run out of psychiatric medication in July 2010 and failed to refill them. It appears that he began to decompensate. While in jail, he was noted to be disorganized, not eating, speaking on an imaginary phone, and responding to internal stimuli (voices). A question was then raised about his fitness to proceed. Mr. Simpson was referred for assessment and found unfit to proceed. He was hospitalized at State Hospital South for competency restoration and subsequently found fit to proceed and returned to jail. While incarcerated he was re-evaluated and found unfit to proceed which lead to his current hospitalization. This report offers an opinion about his fitness to proceed since being admitted.

Mr. Simpson's fitness to proceed was evaluated through structured clinical and forensic interviews, psychiatric, psychosocial and nursing evaluations, staff observation, electronic medical chart review, and collateral sources of information.

Since his admission, Mr. Simpson has had a positive response to treatment. He has been cooperative with assessments and his interactions with staff have been amiable and appropriate. Mr. Simpson has been compliant with receiving his prescribed medications and he is accepting of his mental illness and need for ongoing treatment for his symptoms. He understands he requires ongoing care in a restricted setting.

The Hospital has diagnosed Mr. Simpson with the following psychiatric conditions:

Axis I Schizophrenia, Disorganized Type
** THIS NOTE CONTINUED ON NEXT PAGE **

SIMPSON, GERALD DURK IDAHO DEPT OF HEALTH AND WELFARE Printed: 07/10/2012 14:20
8200000075



STATE 00413

MEDICAL RECORD

Progress Notes

07/10/2012 11:33

** CONTINUED FROM PREVIOUS PAGE **

Probable unspecified pervasive developmental disorder, residual state

Axis II None

Axis III Deferred to Medical Clinic Physician

Axis IV Chronic Mental Illness, Inadequate Social Support, Legal Problems

Axis V Global Assessment of Functioning (GAF) at admission: 35
GAF on 5/11/2012: 25
GAF on 6/08/2012: 26
GAF on 7/06/2012: 27

Mr. Simpson has limited rational and factual understanding of the proceedings against him, including its adversarial nature. He has a basic understanding of the roles of the court personnel; however, he has a limited understanding of the legal system and the process of adjudication. Mr. Simpson is unable to describe his legal rights in any detail. He is unable to accurately name his criminal charges and he has a limited awareness of the potential penalties. Mr. Simpson is unable to report any of the events that led to his charges and lacks the capacity to appreciate his current legal situation and to assist in his defense or to engage in a reasoned choice of legal strategies. He is unable to testify in a relevant manner; however, he is able to display appropriate courtroom behavior.

Because of Mr. Simpson's persistent mental illness, he is not fit to proceed and is unlikely to become fit in the foreseeable future. During this hospitalization and his previous hospitalization Mr. Simpson has displayed entirely appropriate behavior. Prior to these current legal problems, he lived in the community for many years without incurring legal problems. Therefore, the hospital recommends that the court consider a residential placement. Mr. Simpson's sister, Susan Simpson was appointed his Guardian on June 7, 2012. Currently arrangements are being made for Mr. Simpson to reside at Lighthouse Assisted Living in Blackfoot, Idaho following his hospitalization subsequent to acceptance of the court to this arrangement. Mr. Simpson's current commitment expires on July 16, 2012, and Lighthouse Assisted Living has indicated they would be able to accept him into residence as of that date.

If the court has any questions about this report, please contact me at the Hospital at (208) 785-8497.

cc: Vic Pearson, Bannock County Prosecuting Attorney
David Martinez, Defense Attorney
Region VI Mental Health Center

Sincerely,

*** THIS NOTE CONTINUED ON NEXT PAGE ***

SIMPSON, GERALD DURK IDAHO DEPT OF HEALTH AND WELFARE
820000875 DOB:11/12/1956 IDAHO STATE HOSPITAL SOUTH

STATE 00414

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25 day of November, 2013, I caused a true and correct copy of the above and foregoing instrument to be served upon the following individuals in the manner indicated below:

Susan Simpson
765 Channing Ave.
Palo Alto, CA 94301
ssimpsonbv@gmail.com

☒ U.S. Mail
☐ Facsimile
☒ Email
☐ Hand Delivery

*As Conservator and Guardian of
Gerald Durk Simpson*

Thomas B. High
Bren E. Mollerup
Benoit, Alexander, Harwood & High, LLP
126 Second Avenue North
P.O. Box 366
Twin Falls, ID 83303-0366

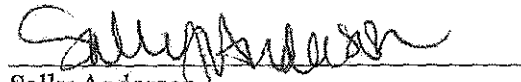
☐ U.S. Mail
☒ Facsimile
☐ Email
☐ Hand Delivery

Attorneys for Defendant State of Idaho

Ian N. Service
Bannock County Prosecutor's Office
624 E Center
P.O. Box P
Pocatello, ID 83201

☐ U.S. Mail
☒ Facsimile
☐ Email
☐ Hand Delivery

Attorneys for Defendant Bannock County


Sally Anderson

SECOND AFFIDAVIT OF BRIANE NELSON MITCHELL IN SUPPORT OF MOTION TO COMPEL
DISCOVERY AGAINST DEFENDANT STATE OF IDAHO - 3

WILLIAM L. MAUK (ISB #1825)
BRIANE NELSON MITCHELL (ISB #2346)
MAUK & BURGOYNE
515 South 6th Street
Post Office Box 1743
Boise, Idaho 83701-1743
Telephone: (208) 345-2654
Facsimile (208) 345-3319
nels@maukburgoyne.com

Filed
2013 NOV 25 AM 11:30
[Signature]

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

RYAN M. MITCHELL,

Plaintiff,

vs.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity, and
BANNOCK COUNTY, IDAHO, a political
subdivision, SUSAN SIMPSON, as
Conservator and Guardian of Gerald Durk
Simpson, and DOES 1-25,

Defendants.

Case No. CV 12-4124 OC

**PLAINTIFF'S REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
MOTION TO COMPEL**

Plaintiff Ryan M. Mitchell, through his counsel, requests that this Court, pursuant to Rule 201 of the Idaho Rules of Evidence, take judicial notice of the Order Dismissing Complaint Without Prejudice from *State of Idaho v. Gerald Durk Simpson*, in the District Court of the Sixth Judicial District, Case No. CR-2010-15926-FE (a copy of which is attached).

Dated November 25, 2013

MAUK & BURGOYNE

By [Signature]
Briane Nelson Mitchell, of the Firm,
Attorneys for Plaintiff

PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO COMPEL - 1

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of November, 2013, I caused a true and correct copy of the above and foregoing instrument to be served upon the following individuals in the manner indicated below:

Susan Simpson
765 Channing Ave.
Palo Alto, CA 94301
ssimpsonby@gmail.com

☒ U.S. Mail
☐ Facsimile
☒ Email
☐ Hand Delivery

*As Conservator and Guardian of
Gerald Dirk Simpson*

Thomas B. High
Bren E. Mollerup
Benoit, Alexander, Harwood & High, LLP
126 Second Avenue North
P.O. Box 366
Twin Falls, ID 83303-0366

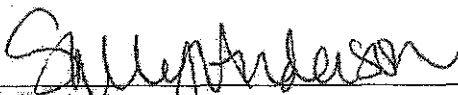
☐ U.S. Mail
☒ Facsimile
☐ Email
☐ Hand Delivery

Attorneys for Defendant State of Idaho

Ian N. Service
Bannock County Prosecutor's Office
624 E Center
P.O. Box P
Pocatello, ID 83201

☐ U.S. Mail
☒ Facsimile
☐ Email
☐ Hand Delivery

Attorneys for Defendant Bannock County


Sally Anderson

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK
MAGISTRATE DIVISION

STATE OF IDAHO,

Plaintiff,

vs.

GERALD DURK SIMPSON,

Defendant.

CASE NO. CR-2010-15926-FE

ORDER DISMISSING
COMPLAINT WITHOUT
PREJUDICE

DECISION AND ORDER

The Defendant Gerald Durk Simpson was charged with Aggravated Battery, an alleged violation of Idaho Code Sections 18-903(a) and 18-907(1)(a) and (b), with notice given that the State would seek an enhancement penalty pursuant to Idaho Code Section 19-2520, for the use of a deadly weapon in the commission of a crime. The Defendant was accused of having committed the crime of Aggravated Battery in Bannock County, Idaho, on September 27, 2010, for willfully and unlawfully using force or violence upon the person of Ryan Mitchell, by either the use of a deadly weapon or instrument and/or causing great bodily harm or permanent disability or permanent disfigurement by shooting Ryan Mitchell in the back. *Criminal Complaint, filed September 30, 2010.* The Defendant was assigned a public defender. *Court Arraignment Minute and Order to meet with Public Defender, filed December 3, 2010.*

Pursuant to I.C. 18-210 and 18-211, the Defendant's counsel sought a determination to determine the Defendant's fitness to proceed and assist with his own

defense. *Motion for Psychological Evaluation, filed December 15, 2010.* A psychological evaluation was ordered appointing Linda Hatzenbuehler, Ph.D., to conduct the evaluation. *Order for Psychological Evaluation, filed December 15, 2010.*

From the very beginning of this case, the Defendant's fitness to stand trial and his mental health was a topic of serious concern.

Dr. Hatzenbuehler found that the Defendant lacked the capacity to appreciate his current legal situation and to assist in his own defense. *Psychological Evaluation Report, dated February 10, 2011.* Following the report, the State sought a civil commitment of the Defendant to a facility for the involuntary care and treatment of mental illness. *Application for the Hearing of a Person Believed to be Mentally Ill Under I.C. 66-329, filed March 2, 2011.* The court ordered the commitment of the Defendant to the custody of the State of Idaho, Department of Health and Welfare pursuant to Idaho Code Section 18-212 for care and treatment at an appropriate facility. *Order, filed March 9, 2011.*

A report from Nels Sather, Ph.D., from State Hospital South in Blackfoot, Idaho was submitted to the court. *Report, filed May 31, 2011.* The Defendant's commitment to the custody of the State of Idaho, Department of Health and Welfare pursuant to Idaho Code Section 18-212 for care and treatment at an appropriate facility was extended. *Order to Extend Commitment Pursuant to Idaho Code, Section 18-212(2), filed May 31, 2011.*

Next, a report from Dr. Richard Baker, from State Hospital South in Blackfoot, Idaho was submitted to the court. *Report, filed November 18, 2011.* Dr. Baker found the Defendant fit to proceed to trial. The Defendant's commitment to the custody of the State of Idaho, Department of Health and Welfare pursuant to Idaho Code Section 18-212

for care and treatment at an appropriate facility was terminated. The Defendant was ordered to be transported and returned to the Bannock County Jail. *Order Terminating Commitment Pursuant to Idaho Code, Section 18-212, filed November 21, 2011.*

The court immediately set the matter for a preliminary hearing. *Notice of Hearing, filed November 21, 2011.* The Defendant's counsel objected to Dr. Baker's evaluation and asked for a reevaluation by Dr. Hatzenbuehler. *Objection to Competency Evaluation, filed November 29, 2011.* The State did not oppose the objection and stipulated to the reevaluation sought on behalf of the Defendant and the reevaluation was ordered. *Order for Psychological Evaluation, filed December 8, 2012.* Dr. Hatzenbeuhler again found him unfit to proceed and unable to assist in his own defense. *Psychological Evaluation Report, dated January 24, 2012.*

The court again set the matter for a preliminary hearing. *Notice of Hearing, filed February 28, 2012.* Based upon the conflicting reports concerning the Defendant's competency and fitness to stand trial, the court set the matter for a competency hearing. *Minute Entry and Order Setting Hearing, filed March 13, 2012.* As a result of the competency hearing, the court ordered one more ninety (90) day commitment to the State of Idaho, Department of Health and Welfare pursuant to Idaho Code Section 18-212 for care and treatment at an appropriate facility *Order, filed April 17, 2012.*

The court has not received a report from anyone at State Hospital South, or on behalf of the State, that contradicts Dr. Hatzenbeuhler's most recent opinion regarding the Defendant's lack of competency and lack fitness to stand trial. The Defendant's commitment has expired and the court has been informed by counsel for the State, counsel for the Defendant, and counsel for State of Idaho, Department of Health and

Welfare, that the Defendant is now the subject of a guardianship and that his guardian has had him admitted to a facility for his future care and treatment.

No person who as a result of mental illness or defect lacks capacity to understand the proceedings against him or to assist in his own defense shall be tried, convicted, sentenced or punished for the commission of an offense so long as such capacity endures.

I.C. 18-210. Based upon the foregoing reports to the court, this court finds and concludes that the Defendant a result of mental illness or defect lacks capacity to assist in his own defense. These proceedings have been suspended for over twenty-two months to establish his capacity and fitness to proceed. It appears by the passage of time, and more importantly by all expert accounts that his mental illness and incapacity is, has been, and will continue to be enduring. He is not and has not been fit to stand trial or to assist in his own defense. He has continuously lacked and still lacks the capacity to make informed decisions about his care and treatment.

NOW, THEREFORE, IT IS HEREBY ORDERED that this proceeding has been suspended long enough and the Complaint on file herein shall be DISMISSED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED THAT counsel for the State shall inform Ryan Mitchell of this dismissal and provide him a copy of this order.

DATED this 30th day of August, 2012.


Rick Carnaroli, Magistrate Judge

CERTIFICATE OF DELIVERY

I hereby certify that on the 30 day of August, 2012, a true copy of this Order

was delivered by courthouse mail to:

David R. Martinez
Bannock County Public Defender
(by courthouse mail)

Vic A. Pearson
Bannock County Prosecuting Attorney
(by courthouse mail)

N Campbell
Magistrate Clerk

Thomas B. High, ISB No. 2430
Bren E. Mollerup, ISB No. 7959
BENOIT, ALEXANDER,
HARWOOD & HIGH, L.L.P.
126 Second Avenue North
P.O. Box 366
Twin Falls, Idaho 83303-0366
Telephone: (208) 733-5463
Fax: (208) 734-1438
Email: high@benoitlaw.com
Email: mollerup@benoitlaw.com
Attorneys for Defendant State of Idaho
(16105/ RESPONSE TO PLAINTIFF'S MOTION TO COMPEL/BEM)

Filed
2013 NOV 25 09:11:21
CLERK OF DISTRICT COURT
BENNOCK COUNTY, IDAHO

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

* * * * *

RYAN M. MITCHELL,

Plaintiff,

v.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity,
and BANNOCK COUNTY, IDAHO, a
political subdivision, SUSAN SIMPSON, as
Conservator and Guardian of Gerald Durk
Simpson, and DOES 1-25,

Defendants.

Case No. CV-12-4124-OC

**RESPONSE TO PLAINTIFF'S
MOTION TO COMPEL**

* * * * *

COMES NOW, the above entitled Defendant, State of Idaho ("State"), by and through its attorneys or record, Benoit, Alexander, Harwood & High, LLP, and submits this Response to Plaintiff's Motion to Compel.

RESPONSE TO PLAINTIFF'S MOTION TO COMPEL - 1

INTRODUCTION

It should be noted at the outset that most of the concerns raised by Plaintiff's motion have been resolved. Specifically, the State has now provided all medical records in its possession with respect to Mr. Simpson and has provided all documents pertaining to the guardianship proceeding relating to Mr. Simpson. Accordingly, the bulk of Plaintiff's Motion to Compel is now moot.

The remaining issues under the motion to compel appear to be simply that Plaintiff does not like the answers provided, not that anything has been withheld. The purpose of a motion to compel is to require an opposing party to answer interrogatories or produce documents, not to require them to change answers so they are in accordance with the other party's position.

DISCUSSION

The State has provided the affidavit of Thomas B. High in support of this Response. A review of the attached documents clearly demonstrates that the interrogatory answers and requests for production complained of have been supplemented. Both answers and documents have now produced. As such, the only remaining issues are with regard to Interrogatories 16 and 17.

Interrogatory 16 asks for information regarding "communications with the Bannock County Court by the Idaho Attorney General's Office or the Idaho Department of Health and Welfare relating to the dismissal of criminal charges against Simpson or his release from custody." This answer has been supplemented to read "Please see previous answers to Interrogatories 14 and 15. It should be noted no request was made by the State for "dismissal" of criminal charges." *See Affidavit of Thomas B. High* Exhibit "A." Clearly, the State has

indicated no request for dismissal was made. Plaintiff's concerns in this regard are not that information has been withheld; rather, Plaintiff simply does not like the answer. The State never made such a request or had any such communication. As such, there is nothing further to provide.

Interrogatory 17 seeks identification of each guardianship proceeding in which the state was involved that relate to a persons criminally charged. Plaintiff argues that evidences of similar incidents are "routinely" admitted into evidence and as such the particulars of each guardianship proceeding must be disclosed and produced. However, this analysis misses the point.

In this case Plaintiff's claims are for negligence and for injunction and declaratory relief under the victims' rights acts. The guardianship proceeding has no relevance to whether the state acted negligently in releasing Mr. Simpson. As such, the only possible relevance of this information would be with respect to the claims regarding the victims' rights act. However, the victims' rights act does not apply to guardianship proceedings. It is not a criminal proceeding against an accused. As such, the particulars of each guardianship are not relevant in any fashion to Plaintiff's claims. This interrogatory cannot be said to be reasonably calculated to lead to discoverable evidence as required by Idaho R. Civ. P. 26(b)(1). The State has already provided more than required.

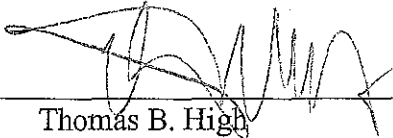
DISCUSSION

Given the supplemental answer provided to Plaintiff at this time the motion before the Court is largely moot and wholly without merit and as such must be denied.

DATED this 21st day of November, 2013.

BENOIT, ALEXANDER, HARWOOD
& HIGH, L.L.P.

By


Thomas B. High
Attorneys for Defendant State of Idaho

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 21st day of November, 2013, he caused a true and correct copy of the **RESPONSE TO PLAINTIFF'S MOTION TO COMPEL** to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743
(Attorneys for Plaintiff)

Hand Delivered
U.S. Mail
Fax
Fed. Express

<input type="checkbox"/>
<input type="checkbox"/>
<input checked="" type="checkbox"/>
<input type="checkbox"/>


Thomas B. High

Thomas B. High, ISB No. 2430
 Bren E. Mollerup, ISB No. 7959
 BENOIT, ALEXANDER,
 HARWOOD & HIGH, L.L.P.
 126 Second Avenue North
 P.O. Box 366
 Twin Falls, Idaho 83303-0366
 Telephone: (208) 733-5463
 Fax: (208) 734-1438
 Email: high@benoitlaw.com
 Email: mollerup@benoitlaw.com
 Attorneys for Defendant State of Idaho
 (16105\Aff of TBH in Supp of Def Res to Plain Motion to Compel\BEM\ka)

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 2013 NOV 25 11:11:21
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IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RYAN M. MITCHELL,
 Plaintiff,

v.

GERALD DURK SIMPSON, an individual,
 STATE OF IDAHO, a governmental entity,
 and BANNOCK COUNTY, IDAHO, a
 political subdivision, SUSAN SIMPSON, as
 Conservator and Guardian of Gerald Durk
 Simpson, and DOES 1-25,
 Defendants.

Case No. CV-12-4124-OC

**AFFIDAVIT OF THOMAS B. HIGH
 IN SUPPORT OF DEFENDANT
 STATE OF IDAHO'S RESPONSE
 TO PLAINTIFF'S MOTION TO
 COMPEL**

AFFIDAVIT OF THOMAS B. HIGH IN SUPPORT OF DEFENDANT STATE OF
 IDAHO'S RESPONSE TO PLAINTIFF'S MOTION TO COMPEL - 1

Handwritten: naktz

STATE OF IDAHO)
) ss.
County of Twin Falls)

Thomas B. High being first duly sworn on oath deposes and says:

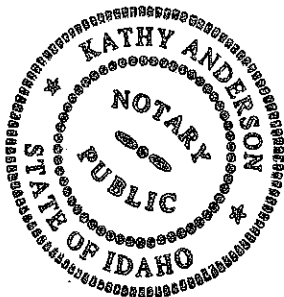
1. I am an attorney of record in the above-entitled matter and I make this Affidavit of my own personal knowledge.
2. As an attorney of record in the above-entitled matter, I have become personally familiar with and have personal knowledge of the discovery provided in this case both by Plaintiff and Defendant.
3. Attached hereto as Exhibit "A" is a true and correct copy of the Third Supplemental Answers to Plaintiff's First Set of Interrogatories to Defendant State of Idaho.
4. Attached hereto as Exhibit "B" is a true and correct copy of the Second Supplemental Responses to Plaintiff's First Set of Document Requests to Defendant State of Idaho.
5. Attached hereto as Exhibit "C" is a true and correct copy of the Second Supplemental Privilege and Statutory Exemption Log.

DATED this 21st day of November, 2013.



THOMAS B. HIGH

SUBSCRIBED AND SWORN to before me this 21st day of November, 2013.





NOTARY PUBLIC
Residing at Twin Falls, Idaho
My Commission Expires: 4/3/2018

AFFIDAVIT OF THOMAS B. HIGH IN SUPPORT OF DEFENDANT STATE OF
IDAHO'S RESPONSE TO PLAINTIFF'S MOTION TO COMPEL - 2

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 21st day of November, 2013, he caused a true and correct copy of the **AFFIDAVIT OF THOMAS B. HIGH IN SUPPORT OF DEFENDANT STATE OF IDAHO'S RESPONSE TO PLAINTIFF'S MOTION TO COMPEL** to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743
(Attorneys for Plaintiff)

Hand Delivered
U.S. Mail
Fax
Fed. Express

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Thomas B. High

AFFIDAVIT OF THOMAS B. HIGH IN SUPPORT OF DEFENDANT STATE OF
IDAHO'S RESPONSE TO PLAINTIFF'S MOTION TO COMPEL - 3

EXHIBIT “A”

(16105\Discovery\Third Supp Ans to Plain 1st Set of Interrogs\TBH\ka)

STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

436 of 503

INTERROGATORY NO. 3: Describe each follow-up visit that the State Department of Health and Welfare had with Simpson after he was dropped from its program on or around July 1, 2010.

SUPPLEMENTAL ANSWER NO. 3: Please see the Department Documents attached hereto. Specifically, see Client Treatment Notes Bates Nos. 6103-6170.

INTERROGATORY NO. 6: Describe each medical diagnosis, treatment and/or prescription for Simpson as well as identify the person who made the diagnosis and/or prescription.

SUPPLEMENTAL ANSWER NO. 6: Please see the Department Documents attached hereto.

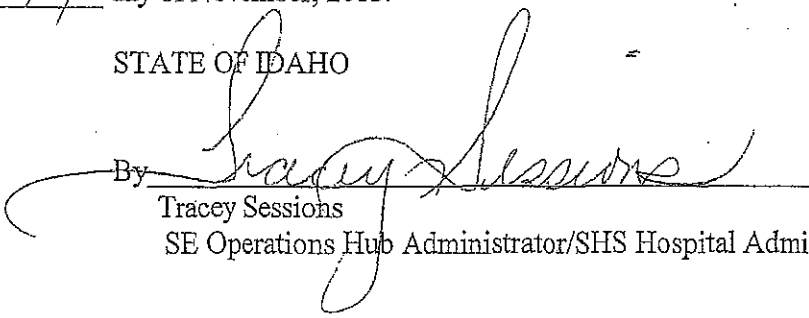
INTERROGATORY NO. 16: Describe any communications with the Bannock County Court by the Idaho Attorney General's Office or the Idaho Department of Health and Welfare relating to the dismissal of criminal charges against Simpson or his release from custody.

SUPPLEMENTAL ANSWER NO. 16: Please see previous answers to Interrogatories 14 and 15. It should be noted no request was made by the State for "dismissal" of criminal charges.

DATED this 14 day of November, 2013.

STATE OF IDAHO

By


Tracey Sessions

SE Operations Hub Administrator/SHS Hospital Administrator

THIRD SUPPLEMENTAL ANSWERS TO PLAINTIFF'S FIRST SET OF
INTERROGATORIES TO DEFENDANT STATE OF IDAHO - 2

STATE OF IDAHO)
) ss.
County of Bannock)

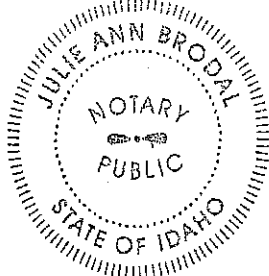
Tracey Sessions, being first duly sworn on oath, deposes and says:

That I am the SE Operations Hub Administrator/SHS Hospital Administrator for the State of Idaho; that I have read the foregoing THIRD SUPPLEMENTAL ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANT STATE OF IDAHO, know the contents thereof, and believe the same to be true based upon my information and belief.

STATE OF IDAHO

By *Tracey Sessions*
Tracey Sessions
SE Operations Hub Administrator/SHS Hospital Administrator

SUBSCRIBED AND SWORN to before me this 14th day of November, 2013.



Julie Ann Brodal
NOTARY PUBLIC
Residing at: Blackfoot, Blingham County, Idaho
My Commission Expires: 11/17/2017

Rule 26(f) Certification.

DATED this 14th day of November, 2013.

BENOIT, ALEXANDER, HARWOOD
& HIGH, L.L.P.

By *Thomas B. High*
Thomas B. High
Attorneys for Defendant State of Idaho

THIRD SUPPLEMENTAL ANSWERS TO PLAINTIFF'S FIRST SET OF
INTERROGATORIES TO DEFENDANT STATE OF IDAHO - 3

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 14th day of November, 2013, he caused a true and correct copy of the SECOND SUPPLEMENTAL ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANT STATE OF IDAHO to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743
(Attorneys for Plaintiff)

Hand Delivered
U.S. Mail
Fax
Fed. Express

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Thomas B. High

THIRD SUPPLEMENTAL ANSWERS TO PLAINTIFF'S FIRST SET OF
INTERROGATORIES TO DEFENDANT STATE OF IDAHO - 4

EXHIBIT “B”

Thomas B. High, ISB No. 2430
 Bren E. Mollerup, ISB No. 7959
 BENOIT, ALEXANDER,
 HARWOOD & HIGH, L.L.P.
 126 Second Avenue North
 P.O. Box 366
 Twin Falls, Idaho 83303-0366
 Telephone: (208) 733-5463
 Fax: (208) 734-1438
 Email: high@benoitlaw.com
 Email: mollerup@benoitlaw.com
 Attorneys for Defendant State of Idaho
 (16105\Discovery\Second Supp Res to Plain 1st Set of Document Requests\TBH\ka)

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

* * * * *

RYAN M. MITCHELL,	)	Case No. CV-12-4124-OC
)	
Plaintiff,)	
)	
v.	)	SECOND SUPPLEMENTAL
	)	RESPONSES TO PLAINTIFF'S
	)	FIRST SET OF DOCUMENT
GERALD DURK SIMPSON, an individual,	)	REQUESTS TO DEFENDANT
STATE OF IDAHO, a governmental entity,	)	STATE OF IDAHO
and BANNOCK COUNTY, IDAHO, a)	
political subdivision, SUSAN SIMPSON, as)	
Conservator and Guardian of Gerald Durk)	
Simpson, and DOES 1-25,)	
)	
Defendants.)	

* * * * *

COMES NOW the Defendant, STATE OF IDAHO (hereinafter "State"), by and through its
 counsel of record, and supplements its responses to Plaintiff's First Set of Document Requests to
 Defendant State of Idaho as follows:

SECOND SUPPLEMENTAL RESPONSES TO PLAINTIFF'S FIRST SET OF DOCUMENT
 REQUESTS TO DEFENDANT STATE OF IDAHO - 1

REQUEST FOR PRODUCTION NO. 1: Produce all documents relating to the care and treatment that the State of Idaho has provided to Simpson.

SUPPLEMENTAL RESPONSE NO. 1: Defendant objects to this interrogatory as it is overbroad in that it is not tailored to treatment documents relevant to the instant case. However, without waiving the same, to the extent they are responses, Plaintiff is directed to the attached documents.

REQUEST FOR PRODUCTION NO. 2: Produce all documents relating to communications that discuss the release (or potential release) of Simpson.

SUPPLEMENTAL RESPONSE NO. 2: Objection. This interrogatory is vague as "release" is not defined. To the extent this Request seeks disclosure of Department documents which discuss Mr. Simpson's termination of services, Plaintiff is directed to the documents previously provided and the documents attached hereto.

REQUEST FOR PRODUCTION NO. 3: Produce all documents relating to communications that discuss the dismissal (or potential dismissal) of criminal charges against Simpson.

SUPPLEMENTAL RESPONSE NO. 3: Defendant states that it did not request dismissal of charges against Mr. Simpson.

REQUEST FOR PRODUCTION NO. 4: Produce all documents relating to the State of Idaho's decision to stop providing help or services to Simpson on or around July 1, 2010.

RESPONSE NO. 4: Please see the documents previously provided and documents attached hereto.

SECOND SUPPLEMENTAL RESPONSES TO PLAINTIFF'S FIRST SET OF DOCUMENT REQUESTS TO DEFENDANT STATE OF IDAHO - 2

REQUEST FOR PRODUCTION NO. 5: Produce all documents relating to any effort the State of Idaho made to place Simpson in a new program during the summer of 2010.

SUPPLEMENTAL RESPONSE NO. 5: Objection. The term "Place" in this Request suggests that the State had the authority to involuntarily put Simpson into a program. The State had no such authority since Simpson was not in its custody. All individuals terminated from the program were referred to providers who could follow up on their care.

REQUEST FOR PRODUCTION NO. 6: Produce all documents that discuss or relate in any way to Simpson's propensity for violence.

SUPPLEMENTAL RESPONSE NO. 6: Defendant has now gathered and produced all documents relating to Mr. Simpson's care. It is Defendant's position that no documents exist which would suggest Mr. Simpson had a propensity for violence.

REQUEST FOR PRODUCTION NO. 7: Produce all documents that discuss or relate in any way to whether Simpson was a threat to others.

SUPPLEMENTAL RESPONSE NO. 7: Defendant has now gathered and produced all documents relating to Mr. Simpson's care. It is Defendant's position that no documents exist which would suggest Mr. Simpson was a threat to others.

REQUEST FOR PRODUCTION NO. 10: Produce all documents relating to the release of Simpson from State of Idaho custody.

SUPPLEMENTAL RESPONSE NO. 10: Objection. This request is vague as "release" is not defined. Defendant answers this request with regard to release from programs provided by the Department. Please see the documents previously provided and the treatment
SECOND SUPPLEMENTAL RESPONSES TO PLAINTIFF'S FIRST SET OF DOCUMENT
REQUESTS TO DEFENDANT STATE OF IDAHO - 3

records attached hereto.

REQUEST FOR PRODUCTION NO. 14: Produce all documents that the State of Idaho provided to Simpson or his attorney in response to subpoenas and discovery requests made in the Bannock County Court action against Simpson.

SUPPLEMENTAL RESPONSE NO. 14: Please see documents previously produced and documents attached hereto. Specifically, Bates Nos. 179-180 and 182-192.

REQUEST FOR PRODUCTION NO. 15: Produce all documents relating to the State of Idaho's involvement in the Bannock County Court action against Simpson, including any documents that the State of Idaho showed to the Court.

SUPPLEMENTAL RESPONSE NO. 15: Objection. The State was not directly involved in the Bannock County Court action. Documents provided to the court included reports of Dr. Nels Sather, dated May 16, 2011 and March 29, 2012, and from Dr. Richard Baker, dated November 17, 2011, and July 10, 2012. These documents are attached hereto (Bates Nos. 403-415).

REQUEST FOR PRODUCTION NO. 16: Produce all documents relating to any conservator and/or guardianship proceeding initiated on behalf of Simpson.

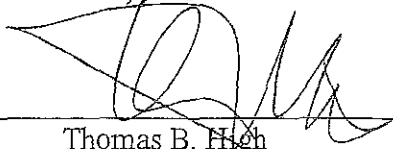
SUPPLEMENTAL RESPONSE NO. 16: Please see the documents previously provided and documents attached hereto (Bates Nos. 343-384; 403-415 and 476-485.)

SECOND SUPPLEMENTAL RESPONSES TO PLAINTIFF'S FIRST SET OF DOCUMENT REQUESTS TO DEFENDANT STATE OF IDAHO - 4

DATED this 14th day of November, 2013.

BENOIT, ALEXANDER, HARWOOD
& HIGH, L.L.P.

By


Thomas B. High
Attorneys for Defendant State of Idaho

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 14th day of November, 2013, he caused a true and correct copy of the **SECOND SUPPLEMENTAL RESPONSES TO PLAINTIFF'S FIRST SET OF DOCUMENT REQUESTS TO DEFENDANT STATE OF IDAHO** to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743
(Attorneys for Plaintiff)

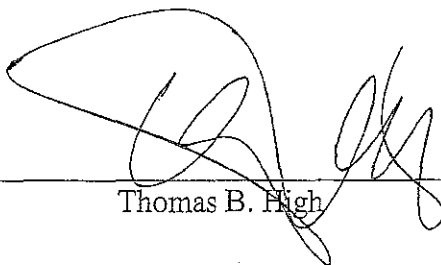
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Fax

Fed. Express

☐☒☐☐


Thomas B. High

SECOND SUPPLEMENTAL RESPONSES TO PLAINTIFF'S FIRST SET OF DOCUMENT
REQUESTS TO DEFENDANT STATE OF IDAHO - 5

EXHIBIT “C”

Thomas B. High, ISB No. 2430
Bren E. Mollerup, ISB No. 7959
BENOIT, ALEXANDER,
HARWOOD & HIGH, L.L.P.
126 Second Avenue North
P.O. Box 366
Twin Falls, Idaho 83303-0366
Telephone: (208) 733-5463
Fax: (208) 734-1438
Email: high@benoitlaw.com
Email: mollerup@benoitlaw.com
Attorneys for Defendant State of Idaho
(16105/PrivilegeLog/BEM)

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

* * * * *

RYAN M. MITCHELL,	)	Case No. CV-12-4124-OC
)	
Plaintiff,)	
)	
v.	)	SECOND SUPPLEMENTAL
	)	PRIVILEGE AND STATUTORY
	)	EXEMPTION LOG
GERALD DURK SIMPSON, an individual,)	
STATE OF IDAHO, a governmental entity,)	
and BANNOCK COUNTY, IDAHO, a)	
political subdivision, SUSAN SIMPSON, as)	
Conservator and Guardian of Gerald Durk)	
Simpson, and DOES 1-25,)	
)	
Defendants.)	

* * * * *

COMES NOW, the above entitled Defendant, State of Idaho, by and through its attorneys of record, Benoit, Alexander, Harwood & High, LLP, and submits this Second Supplemental Privilege

SECOND SUPPLEMENTAL PRIVILEGE AND STATUTORY EXEMPTION LOG - 1

Log for documents requested by Plaintiff in their Initial Discovery Request for which Defendants are claiming a privilege or statutory exemption.

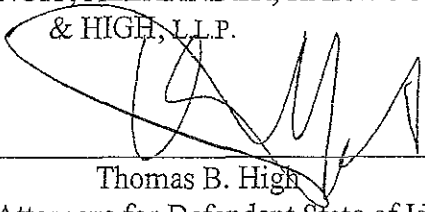
For each document withheld you will find listed the type of document, Bates Number, date of creation, the recipient of the document, and the subject matter, along with the applicable privilege.

DOCUMENT	BATES NO.	DATE OF CREATION	RECIPIENT/AUTHOR OF DOCUMENT	SUBJECT MATTER	PRIVILEGE/STATUTORY EXEMPTION
Communication by email from Region Six Adult Mental Health	386-402	4/2/12 – 6/20/12	Attorney General's Office Staff	Attorney Client Communication	Attorney/Client Privilege and Work Product
Communication by email from Region Six Adult Mental Health	416-475	3/5/12- 5/31/12	Attorney General's Office Staff	Attorney Client Communication	Attorney/Client Privilege and Work Product
Communication by email from Region Six Adult Mental Health	490-511	7/2/12 – 7/23/12	Attorney General's Office Staff	Attorney Client Communication	Attorney/Client Privilege and Work Product

DATED this 14th day of November, 2013.

BENOIT, ALEXANDER, HARWOOD
& HIGH, L.L.P.

By


Thomas B. High

Attorneys for Defendant State of Idaho

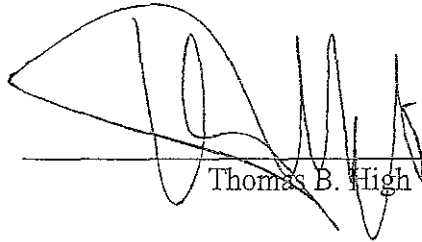
CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 14th day of November, 2013, he caused a true and correct copy of the SECOND SUPPLEMENTAL PRIVILEGE AND STATUTORY EXEMPTION LOG to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743
(Attorneys for Plaintiff)

Hand Delivered
U.S. Mail
Fax
Fed. Express

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Thomas B. High

WILLIAM L. MAUK (ISB #1825)
BRIANE NELSON MITCHELL (ISB #2346)
MAUK & BURGOYNE
515 South 6th Street
Post Office Box 1743
Boise, Idaho 83701-1743
Telephone: (208) 345-2654
Facsimile (208) 345-3319
nels@maukburgoyne.com

Filed
2013 Nov 25 5:11 PM
JCL

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

RYAN M. MITCHELL,

Plaintiff,

vs.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity, and
BANNOCK COUNTY, IDAHO, a political
subdivision, SUSAN SIMPSON, as
Conservator and Guardian of Gerald Durk
Simpson, and DOES 1-25,

Defendants.

Case No. CV 12-4124 OC

**REPLY MEMORANDUM IN
SUPPORT OF MOTION TO COMPEL
AGAINST THE STATE OF IDAHO**

I. Preliminary Statement

It is well established that discovery responses should not be “interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.” IRCP 26(f). Furthermore, “an evasive or incomplete answer is to be treated as a failure to answer.” IRCP 37(a)(3).

On August 26, 2013, this Motion to Compel was filed with the Court. Last week, one week before the scheduled hearing on this motion, counsel for Plaintiff Ryan M. Mitchell (“Mr.

**REPLY MEMORANDUM IN SUPPORT OF MOTION TO COMPEL AGAINST
THE STATE OF IDAHO - 1**

Mitchell") received the State's supplemental discovery responses, production of a disc with approximately 6000 pages (two bankers boxes) of documents, and a revised privilege log. Three days later, on Thursday, November 21, 2013, Mr. Mitchell's counsel received the State's Response to Plaintiff's Motion to Compel and the Affidavit of Thomas B. High ("High Aff."), which attached copies of: 1) the State's Third Supplemental Answers to Plaintiff's First Set of Interrogatories (Ex. A); 2) Second Supplemental Responses to Plaintiff's First Set of Document Requests (Ex. B); and 3) Second Supplemental Privilege and Statutory Exemption Log (Ex. C).

The State's response to this Motion should have been filed no later than Monday, November 17, 2013. IRCP 7(b)(3). The State has had more than three months to formulate and prepare a response. Nevertheless, the State did not file its response to this Motion until last Thursday, November 21, 2013, and did not supplement its discovery responses and production until a few days before that.

Given the State's untimely response, it is difficult to fully evaluate the State's production, its new answers, and whether "most" of the issues have been resolved as the State has argued. Nevertheless, contrary to the State's argument, there are still several open matters that should be addressed in connection with this Motion to Compel.

II. Open Issues

With this Motion, Mr. Mitchell sought an order requiring the State to fully respond and produce all documents and materials responsive to Document Request Nos. 1-7, 10, 15 and 16, and Interrogatory Nos. 16 and 17. Despite the State's last minute supplemental responses and document production, a court order is still needed in connection with Request Nos. 2, 6, 7, 10 and Interrogatory Nos. 16 and 17. Furthermore, the Second Supplemental Privilege Log still fails to

meet the basic requirements of the IRCP, and the instructions for identification of allegedly privileged communications.

A. Request Nos. 2 & 10

In April, the State had initially hid behind its boilerplate privilege assertion and refused to produce anything in response to the request to:

2. Produce all documents relating to communications that discuss the release (or potential release) of Simpson.”

10. Produce all documents relating to the release of Simpson from State custody.

(First BN Mitchell Aff. filed with the Motion to Compel in August, at, Ex. D, p. 2.) In the new responses to Request Nos. 2 and 10 that were received last week, the State decided to take a new approach and raise an objection that it had not raised last April. The new responses to Request Nos. 2 and 10 both raised a “vague” objection as illustrated by the new response to Request No. 2:

SUPPLEMENTAL RESPONSE NO. 2: Objection. This interrogatory is vague as “release” is not defined. To the extent this Request seeks disclosure of Department documents which discuss Mr. Simpson’s termination from services, Plaintiff is directed to the documents previously provided and the documents attached hereto.

(High Aff., Ex. B.) The State waived its “vague” objection when it failed to raise it six months ago. Moreover, the word “release” hardly requires a special definition or instruction. Release means to set free from restraint. That is how the word is used in the Idaho Constitution as well as in the Idaho Crime Victims Statute. Moreover, the State’s attempt to substitute “termination from services” is the type of evasion that is treated as a “failure to answer” under IRCP 37(a)(3).

B. Document Request 6 & 7

The State was asked two rather straightforward requests to produce all documents relating to whether Simpson was a threat to others or whether he had a propensity for violence. In the Second Supplemental Response received last week, the State chose to provide evasive and incomplete answers:

REQUEST FOR PRODUCTION NO. 6: Produce all documents that discuss or relate in any way to Simpson's propensity for violence.

SUPPLEMENTAL RESPONSE NO. 6: Defendant has now gathered and produced all documents relating to Mr. Simpsons [sic] care. It is Defendant's position that no documents exist which would suggest Mr. Simpson had a propensity for violence.

REQUEST FOR PRODUCTION NO. 7: Produce all documents that discuss or relate in any way to whether Simpson was a threat to others.

SUPPLEMENTAL RESPONSE NO. 7: Defendant has now gathered and produced all documents relating to Mr. Simpsons [sic] care. It is Defendant's position that no documents exist which would suggest Mr. Simpson had a propensity for violence.

(High Aff., Ex. B.)

The truth is somewhat different than the State's response. Documents do exist that show that Simpson had a propensity for violence and was a threat to others. A few examples from the documents that the State produced last week:

- "Violent – threatening to kill & commit suicide." (State 00516.)
- Simpson's "mother and sisters fear him, and he rules the home through fear...he has become physically aggressive toward his mother." (State 00520.)
- "...he has become increasingly aggressive...He could be potentially dangerous in the future..." (State 00523.)

REPLY MEMORANDUM IN SUPPORT OF MOTION TO COMPEL AGAINST
THE STATE OF IDAHO - 4

- "Suicidal and threatening to kill sister and mother." (State 00574.)
- "...his condition will deteriorate to point where he is or will be a definite threat to others." (State 00633.)
- "Dangerous to others and Gravely disabled." (State 00738)

(The Second Affidavit of Briane Nelson Mitchell (the "Second BN Mitchell Aff.") in Support of the Motion to Compel has been filed with this Reply Memorandum. Copies of the above referenced documents from the State's production last week, are attached to the Second BN Mitchell Aff. as Ex. A.)

The State's evasive or incomplete responses to Request Nos. 6 and 7 are the equivalent of a failure to answer. IRCP 37(a) (3). Moreover, it is impossible to imagine any legitimate reason for the State making the statements that **no** documents exist showing that Simpson was a threat to others and had a propensity for violence in light of the clear evidence to the contrary.

C. Interrogatory 16

The supplemental answer that the State provided still avoids answering the question:

INTERROGATORY NO. 16: Describe any communications with the Bannock County Court by the Idaho Attorney General's Office or the Idaho Department of Health and Welfare relating to the dismissal of criminal charges against Simpson or his release from custody.

SUPPLEMENTAL ANSWER NO. 16: Please see previous answers to Interrogatories 14 and 15. It should be noted no request was made by the State for "dismissal" of criminal charges.¹

(High Aff., Ex. A.)

¹ The previous answers to Interrogatories 14 and 15 do not say anything about the State's communications with the Bannock County Court. (First BN Mitchell Aff., filed with the Motion to Compel in August, at Ex. E, p. 7.)

The State should be required to provide a full and complete answer to the question rather than playing word games. Contrary to the State's attempt to rewrite the question, the State was not asked whether it had asked for a dismissal, but rather was asked for a description of any communication "relating to the dismissal of criminal charges against Simpson or his release from custody." The phrase "relating to" was specifically defined:

"Relate(s) to," "related to" or "relating to" means, in addition to its customary and usual meaning: of or concerning, pertaining to, consisting of, bearing upon, containing, describing, evidencing, constituting, reflecting, or having any logical or factual connection with the subject matter dealt with or alluded to in the request.

(Second BN Mitchell Aff. par. 2.)

Furthermore, the State's response ignores, or perhaps attempts to create a misleading impression relating to, the State's involvement in the criminal case against Simpson. For example, in dismissing the criminal case against Simpson, Judge Carnoli specifically stated that he had been "informed" by the Idaho State Department of Health and Welfare:

...the court has been informed by counsel for the State [i.e. Bannock County Prosecuting Attorney], counsel for the Defendant, and counsel for State of Idaho, Department of Health and Welfare, that the Defendant is now the subject of a guardianship and that his guardian has had him admitted to a facility for his future care and treatment.

(A copy of Judge Carnoli's Order dismissing the criminal charge against Simpson is attached to the Request for Judicial Notice filed with this Reply Memorandum.) In addition, in one of the documents that it produced last week, the State disclosed a copy of a letter that it had sent directly to Judge Carnoli in the criminal case on July 10, 2012, a few days before the State released Simpson

**REPLY MEMORANDUM IN SUPPORT OF MOTION TO COMPEL AGAINST
THE STATE OF IDAHO - 6**

from custody, in which the State asked the Court to consider its recommendation relating to Simpson's release from custody and placement in a residential living center:

Therefore, the hospital recommends that the court consider a residential placement. Mr. Simpson's sister, Susan Simpson was appointed his Guardian on June 7, 2012. Currently arrangements are being made for Mr. Simpson to reside at Lighthouse Assisted Living in Blackfoot, Idaho following his hospitalization subsequent to acceptance of the court to this arrangement. Mr. Simpson's current commitment expires on July 16, 2012, and Lighthouse Assisted Living has indicated they would be able to accept him into residence as of that date.

(State 00414; a copy of this document, produced by the State last week, is attached to the Second BN Mitchell Aff. as Ex. D.)

The State should not be allowed to use evasive and incomplete answers to cause unnecessary delay and expense in this case.

D. Interrogatory No. 17

The State was asked to "[i]dentify each court proceeding that the State of Idaho has filed to obtain the appointment of conservator and/or guardianship for anyone who is facing criminal charges" and responded by refusing to identify those other court cases, but admitting that "since 2005 the State has filed 32 conservatorship/guardianship proceedings for patients at State Hospital South or clients of Adult Mental Health Region Six." (First BN Mitchell Aff., August 26, 2013, Ex. F at p.8.)

The State should be required to identify the civil guardianship or conservatorship cases that it has filed on behalf of others that are facing pending criminal charges. These other cases were filed openly. The State has not claimed that any of the other cases were filed under seal or subject to protective orders. The other instances where the State has chosen to ignore obligations

**REPLY MEMORANDUM IN SUPPORT OF MOTION TO COMPEL AGAINST
THE STATE OF IDAHO - 7**

to crime victims are certainly relevant to the issues raised in this case relating to the State's cavalier treatment and respect for the rights of crime victims.

E. Second Supplemental Privilege Log

The State's new privilege log that it produced last week repeats the same type of obfuscation that it used in the earlier versions. At the time that this Motion was filed in August, the State had said that it was: "currently working on an amended Privilege Log. However, this will take some time." (First BN Mitchell Aff., par. 14, Ex. I.) The principal difference between the old log and the amended log is that the State has abandoned its HIPAA and Idaho Public Records privileges and reduced the new log to three entries. None of the three entries on the new log are broken down by specific date, but instead cover extended periods of time (eg, "4/3/12 – 6/20/12"). (High Aff., Ex. C.) None of the three entries identifies the actual author or recipient of the communication, but instead merely references "Attorney General's Staff". (*Id.*) None of the three entries actually identify a specific communication, but instead appears to lump a large number of emails together ("416-475"). (*Id.*) This hardly qualifies as providing sufficient information "to enable other parties to assess the applicability of the privilege or protection." IRCP 26(b)(5)(B). Moreover, the State has ignored the instructions that were included in the Interrogatories and Document Requests that had asked that each document or communication withheld provide "(a) A description of the allegedly privileged communication...(b) A list of the recipient(s)...(c) The Date...(d) The subject..." (Second BN Mitchell Aff., Ex. A, p.5.)

III. Conclusion

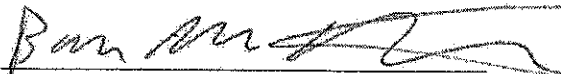
In this case, the State has taken the position that it can ignore the rights of victims of violent crime. That is, the State has argued that the Idaho Constitutional provision and the Idaho

REPLY MEMORANDUM IN SUPPORT OF MOTION TO COMPEL AGAINST
THE STATE OF IDAHO - 8

Crime Victim's Statute do not apply to the State or its departments like Health & Welfare and the Attorney General's office. As demonstrated in this Motion to Compel, the State has taken the same cavalier approach to its discovery obligation in the lawsuit brought by Mr. Mitchell. Mr. Mitchell respectfully requests that his Motion to Compel be granted and that appropriate orders and relief be granted against the State.

November 25, 2013

MAUK & BURGOYNE

By 
Briane Nelson Mitchell, of the Firm,
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of November, 2013, I caused a true and correct copy of the above and foregoing instrument to be served upon the following individuals in the manner indicated below:

Susan Simpson
765 Channing Ave.
Palo Alto, CA 94301
ssimpsonbv@gmail.com

☒ U.S. Mail
☐ Facsimile
☒ Email
☐ Hand Delivery

*As Conservator and Guardian of
Gerald Durk Simpson*

Thomas B. High
Bren E. Mollerup
Benoit, Alexander, Harwood & High, LLP
126 Second Avenue North
P.O. Box 366
Twin Falls, ID 83303-0366

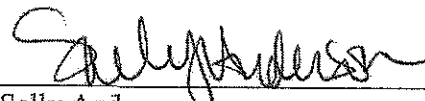
☐ U.S. Mail
☒ Facsimile
☐ Email
☐ Hand Delivery

Attorneys for Defendant State of Idaho

Ian N. Service
Bannock County Prosecutor's Office
624 E Center
P.O. Box P
Pocatello, ID 83201

☐ U.S. Mail
☒ Facsimile
☐ Email
☐ Hand Delivery

Attorneys for Defendant Bannock County


Sally Anderson

REPLY MEMORANDUM IN SUPPORT OF MOTION TO COMPEL AGAINST
THE STATE OF IDAHO - 10

Thomas B. High, ISB No. 2430
Bren B. Mollerup, ISB No. 7959
BENOIT, ALEXANDER,
HARWOOD & HIGH, L.L.P.
126 Second Avenue North
P.O. Box 366
Twin Falls, Idaho 83303-0366
Telephone: (208) 733-5463
Fax: (208) 734-1438
Email: high@benoitlaw.com
Email: mollerup@benoitlaw.com
Attorneys for Defendant State of Idaho
(16105)Objection to Proposed Final Monetary Judgment - Simpson(BEM/ka)

FILED
BENNOCK COUNTY
CLERK OF DISTRICT COURT
2012 NOV 26 PM 1:58
BY
DEBIDY/CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RYAN M. MITCHELL,

Plaintiff,

v.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity,
and BANNOCK COUNTY, IDAHO, a
political subdivision, SUSAN SIMPSON, as
Conservator and Guardian of Gerald Durk
Simpson, and DOES 1-25,

Defendants.

Case No. CV-12-4124-OC

**OBJECTION TO THE PROPOSED
FINAL MONETARY JUDGMENT
AGAINST DEFENDANTS GERALD
DURK SIMPSON AND SUSAN
SIMPSON AS CONSERVATOR
AND GUARDIAN**

COMES NOW the Defendant, State of Idaho ("State"), by and through its attorney of
record, Benoit, Alexander, Harwood & High, LLP, and submits this Objection to the Proposed
OBJECTION TO THE PROPOSED FINAL MONETARY JUDGMENT AGAINST
DEFENDANTS GERALD DURK SIMPSON AND SUSAN SIMPTON AS
CONSERVATOR AND GUARDIAN - 1

Final Monetary Judgment Against Defendants, Gerald Durk Simpson and Susan Simpson as Conservator and Guardian.

Plaintiff has now moved this Court for entry of Judgment in the amount of \$808,259.04. The materials provided by Plaintiff address only the medical costs expended in this case by Mr. Mitchell. It is the State's position, at this time, that no sufficient proof has been put on regarding any general damages in this case. As noted by the Affidavits and by the Application in conjunction with the final Judgment, the general damages requested in this case are simply based on the amount of medical damages and an additional request by Plaintiff to the Court to exercise its discretion and double the amount of damages pursuant to I.C. § 18-3307. No real basis is advanced for this theory.

It is the State's concern at this time that an amount of general damages will be predetermined by this Court before the State has a chance to put on its evidence at trial. If the Court is to make such a determination binding on the State, the State should have the opportunity to present evidence and argue against such an award of damages. The State would also note that the amount of general damages prayed for by Plaintiff at this time exceeds the statutory caps limiting general damages in our state.

For these reasons, the State would request that the Application for Entry of Judgment in this case be denied until a trial can be had in this matter. In the alternative, should the Court be unwilling to postpone such Judgment, the State would request, at a minimum, that the Judgment clearly indicate that it is not binding in any way, on the liability or the determination of damages with respect to the claims against the State of Idaho.

OBJECTION TO THE PROPOSED FINAL MONETARY JUDGMENT AGAINST
DEFENDANTS GERALD DURK SIMPSON AND SUSAN SIMPTON AS
CONSERVATOR AND GUARDIAN - 2

DATED this 26th day of November, 2013.

BENOIT, ALEXANDER, HARWOOD
& HIGH, L.L.P.

By


Thomas B. High

Attorneys for Defendant State of Idaho

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 26th day of November 2013, he caused a true and correct copy of the **OBJECTION TO THE PROPOSED FINAL MONETARY JUDGMENT AGAINST DEFENDANTS GERALD DURK SIMPSON AND SUSAN SIMPSON AS CONSERVATOR AND GUARDIAN** to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743
(Attorneys for Plaintiff)

Hand Delivered ☐
U.S. Mail ☐
Fax ☒
Fed. Express ☐


Thomas B. High

OBJECTION TO THE PROPOSED FINAL MONETARY JUDGMENT AGAINST
DEFENDANTS GERALD DURK SIMPSON AND SUSAN SIMPTON AS
CONSERVATOR AND GUARDIAN - 3

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RYAN M. MITCHELL,

Plaintiff,

vs.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity,
and BANNOCK COUNTY, IDAHO, a
political subdivision, SUSAN SIMPSON,
as Conservator and Guardian of
Gerald Durk Simpson, and DOES 1-25,

Defendants.

CASE NO. CV-2012-004124-OC

**MONETARY JUDGMENT AGAINST
DEFENDANTS GERALD DURK
SIMPSON AND SUSAN SIMPSON AS
CONSERVATOR/GUARDIAN OF
GERALD DURK SIMPSON**

On July 26, 2013, a Default Judgment was entered against Defendants Gerald Durk Simpson and Susan Simpson as Conservator/Guardian of Gerald Durk Simpson of the Third (Assault and Battery) and Fourth (Negligence) Causes of Action.

The Court's Judgment allowed Plaintiff Ryan M. Mitchell "to submit evidence from which the Court can determine the amount of damages...that shall be awarded as part of the Default Judgment pursuant to I.R.C.P. 55(b)(2) and I.C. 5-336."

NOW THEREFORE, after careful consideration of the Affidavit of Ryan M. Mitchell in Support of Damage Determination, and Application for Entry of Damage Award in Connection with Default Judgment Against Defendant Gerald Durk Simpson and Defendant Susan Simpson, as Conservator/Guardian for Gerald Durk Simpson, and the other pleadings, papers and evidence submitted to the Court, this Court hereby orders and enters judgment in favor of Plaintiff Ryan

MONETARY JUDGMENT
Mitchell v. Simpson et. al.
CV-2012-004124-OC

PAGE - 1

M. Mitchell and against Defendant Gerald Durk Simpson and Defendant Susan Simpson as
Conservator/Guardian for Gerald Durk Simpson, in the amount of:

Medical Bills:	\$ 101,032.38
Non-Economic Damages:	<u>\$ 151,548.57</u>
Total:	\$ 252,580.95

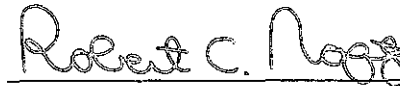
Multiplied x 2 (I.C. § 18-3307) \$ 505,161.90

The total judgment to Plaintiff Ryan M. Mitchell against Defendant Gerald Durk Simpson and
Defendant Susan Simpson as Conservator/Guardian for Gerald Durk Simpson is \$ 505,161.90.

The entry of this default judgment has no effect on the liability or the determination of
damages with respect to any claims against the remaining defendants in this case.

IT IS SO ORDERED.

DATED this 29 day of November, 2013.



ROBERT C. NAFTZ
District Judge

Copies to:

Susan Simpson (Conservator/Guardian of Gerald Durk Simpson)
Thomas B. High (Attorney for Defendant State of Idaho)
Ian N. Service (Attorney for Defendant Bannock County)
Briane Nelson Mitchell (Attorney for Plaintiff Ryan M. Mitchell)

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RYAN M. MITCHELL,

Plaintiff,

vs.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity,
and BANNOCK COUNTY, IDAHO, a
political subdivision, SUSAN SIMPSON,
as Conservator and Guardian of
Gerald Durk Simpson, and DOES 1-25,

Defendants.

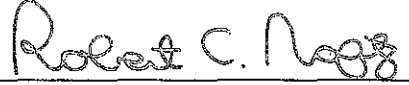
CASE NO. CV-2012-004124-OC

**FINAL JUDGMENT AGAINST
DEFENDANTS GERALD DURK
SIMPSON AND SUSAN SIMPSON AS
CONSERVATOR/GUARDIAN OF
GERALD DURK SIMPSON**

Based on the default judgment entered by this Court, it is hereby ORDERED and
ADJUDGED that Plaintiff is awarded damages against Defendants Gerald Durk Simpson and
Susan Simpson, as Conservator/Guardian of Gerald Durk Simpson in the amount of
\$ 505,161.90.

IT IS SO ORDERED.

DATED this 29 day of November, 2013.


ROBERT C. NAFTZ
District Judge

Copies to:

Susan Simpson (Conservator/Guardian of Gerald Durk Simpson)
Thomas B. High (Attorney for Defendant State of Idaho)
Ian N. Service (Attorney for Defendant Bannock County)
Briane Nelson Mitchell (Attorney for Plaintiff Ryan M. Mitchell)

FINAL JUDGMENT
Mitchell v. Simpson et. al.
CV-2012-004124-OC

PAGE - 1

JAN 20 2013
CLERK OF DISTRICT COURT

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

RYAN M. MITCHELL,

Plaintiff,

vs.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity,
and BANNOCK COUNTY, IDAHO, a
political subdivision, SUSAN SIMPSON, as
Conservator and Guardian of Gerald Durk
Simpson, and DOES 1-25

Defendants.

Case No. CV-2012-4124-OC

**MEMORANDUM DECISION
AND ORDER**

NATURE OF THE ACTION

This case comes before this Court pursuant to a motion for summary judgment filed by the State of Idaho, one of the defendants in this case. Supporting affidavits were filed by both parties. The State also filed a "Statement of Undisputed Facts." The Plaintiff filed his own response. In his objection, the Plaintiff argued "the State's two conclusory hearsay affidavits do **not** contain admissible evidence that could conceivably support summary judgment under Rule 56(e). And, second, the State's motion is premature because further discovery should be allowed under Rule 56(f)." (Mem. in Opp'n to State's Mot. for Summ. J. ("Mem. in Opp'n"), July 29, 2013, 1.) However, at the outset of oral arguments regarding this motion, the parties agreed to go forward with the hearing. Thus, the Plaintiff voluntarily abandoned his Rule 56(f) motion for a continuance, and this Court will not address that issue further.

Oral arguments were heard on November 25, 2013. After reviewing the entire file and the relevant law, and considering the arguments made by the parties, this Court now issues this Memorandum Decision and Order.

STATEMENT OF THE FACTS

The following facts relevant to this motion are derived from oral arguments, and the affidavits and documents submitted by the parties.

This case stems from a shooting that occurred on September 27, 2010. On that date, the defendant, Gerald Durk Simpson, shot Ryan Mitchell in the back outside of a coffee shop in Pocatello. Mr. Mitchell barely survived. Prior to the shooting, Mr. Simpson had been in the care and custody of the State. In fact, the State of Idaho Department of Health and Welfare (“IDHW”) had taken care of the Defendant for most of his adult life. However, Mr. Simpson was released from the care of the State on June 23, 2010. Mr. Simpson’s release was part of a restructuring of the criteria under which clients could receive treatment from the State, a result of budget cuts totaling more than \$36 million.

ISSUES

1. Whether to grant the Plaintiff’s requests to strike the Defendant’s supporting affidavits.
2. Whether to grant the Defendant’s Motion for Summary Judgment

DISCUSSION

This Court must first address the Plaintiff’s request to strike the two affidavits submitted by the State in support of summary judgment. The first affidavit is that of Sue Chadwick, which includes documents attached as exhibits. The second is the Affidavit of Jodi Osborn.

1. Whether to grant the motions to strike.

a. Affidavit Standard

“The admissibility of evidence contained in affidavits and depositions in support of or in opposition to a motion for summary judgment is a threshold question to be answered before applying the liberal construction and reasonable inferences rule to determine whether the evidence is sufficient to create a genuine issue for trial.” *J-U-B Engineers, Inc. v. Security Ins. Co. of Hartford*, 146 Idaho 311, 193 P.3d 858, 862 (2008). Rule 56(e) of the Idaho Rules of Civil Procedure requires that supporting affidavits for a motion for summary judgment “be made on personal knowledge and set forth such facts as would be admissible in evidence.” *Id.*; IDAHO R. CIV. P. 56(e). “Where an affidavit merely states conclusions and does not set out facts, such supporting affidavit is inadmissible to show the absence of a genuine issue of material fact.” *Casey v. Highland Ins. Co.*, 100 Idaho 505, 508, 600 P.2d 1387, 1390 (1979). Furthermore, “[a] conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence, is insufficient to create a genuine issue of material fact.” *Caneva v. Sun Comtys. Operating Ltd. P’ship*, 550 F.3d 755, 763 (9th Cir. 2008). Therefore, an affidavit that is “conclusory, based on hearsay, and not supported by personal knowledge” will not create a disputed issue of material fact. *Posey v. Ford Motor Credit Co.*, 141 Idaho 477, 483, 111 P.3d 162, 168 (Idaho Ct. App. 2005).

b. Discussion

The motions to strike submitted by the Plaintiff are both based upon alleged violations of the requirements of IRCP 56(e), which, as explained, requires that supporting affidavits “be

made on personal knowledge and set forth such facts as would be admissible in evidence.” First, the Plaintiff argues the Affidavit of Jodi Osborn “is conclusory, and is not even based upon the affiant’s personal knowledge.” (Mem. in Opp’n at 6.) Further, the Plaintiff argues that even considering Ms. Osborn’s statements regarding the State’s budget, “there is no connection between that fact and Simpson other than speculation and surmise which does not help the State because no inferences can be drawn in the State’s favor in connection with this motion.” (*Id.*)

The Affidavit of Jodi Osborn states that she is the Financial Executive Officer for the Idaho Department of Health and Welfare. The affidavit goes on to state that the budget for the Department of Health and Welfare was cut by \$36,550,600, not including decreases in matching federal funds. That information is relevant to the primary issue of whether the release of Defendant Simpson was related to budgetary constraints. Ms. Osborn clearly has personal knowledge of the budget cuts through her role as the Financial Executive Officer for the Idaho Department of Health and Welfare. As such, this Court hereby finds the Affidavit of Jodi Osborn to be admissible and relevant, and the request to strike that affidavit is hereby DENIED.

In relation to the Affidavit of Sue Chadwick, the Plaintiff asserts the “State has used the Chadwick affidavit in an attempt to introduce three hearsay documents into evidence.” (*Id.* at 7.) The Plaintiff further argues the three attached documents are inadmissible under the public records and reports exception to the hearsay rule, as contained in Idaho Rule of Evidence (“IRE”) 803(8). (*Id.*) The Defendant counters that the affidavit is admissible pursuant to the business records exception.

As explained previously and also pursuant to IRE 602¹, “[a] witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.” However, “[a] statement is not hearsay if ... the statement is offered against a party and is ... a statement by a party’s agent or servant concerning a matter within the scope of the agency or employment of the servant or agent, made during the existence of the relationship.” Idaho R. of Evidence 801(d) (2012).² Furthermore, Idaho Rule of Evidence 803(6), the business record exception to the hearsay rule, “allows admission of a record ... if it was made and kept in the course of a regularly conducted business activity and if it was the regular practice of that business to make the ... record.” *State v. Hill*, 140 Idaho 625, 628, 97 P.3d 1014, 1017 (Idaho Ct.App. 2004)(internal citation omitted). IRE 803(6) provides in pertinent part:

Rule 803. Hearsay exceptions; availability of declarant immaterial.

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

....

(6) Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or

¹ **Rule 602. Lack of personal knowledge**

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the testimony of the witness. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

² (d) **Statements which are not hearsay.** A statement is not hearsay if--

...

(2) *Admission by Party-Opponent.* The statement is offered against a party and is (A) the party’s own statement, in either an individual or a representative capacity, or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by a party to make a statement concerning the subject, or (D) a statement by a party’s agent or servant concerning a matter within the scope of the agency or employment of the servant or agent, made during the existence of the relationship, or (E) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy.

near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with Rule 902(11), unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

In turn, Rule 902(11)³ provides that extrinsic evidence of authenticity is not a condition precedent to admit certified records of regularly conducted activity. However, the custodian or other qualified individual must still certify that such record

(i) was made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters, (ii) is kept in the course of the regularly conducted activity and (iii) was made by the regularly conducted activity as a regular practice, unless the sources of information or the method or circumstances of preparation indicate lack of trustworthiness....

Idaho R. Evid. 902(11)(2012). Thus, "[t]he general requirement for admission under I.R.E.

803(6) is that the document be 'produced in the ordinary course of business, at or near the time

³ (11) **Certified Records of Regularly Conducted Activity.** The original or a duplicate of a record of regularly conducted activity, within the scope of Rule 803(6), which the custodian thereof or another qualified individual certifies (i) was made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters, (ii) is kept in the course of the regularly conducted activity and (iii) was made by the regularly conducted activity as a regular practice, unless the sources of information or the method or circumstances of preparation indicate lack of trustworthiness; but a record so certified is not self-authenticating under this subsection unless the proponent makes the intention to offer it known to the adverse party and makes it available for inspection sufficiently in advance of its offer in evidence to provide the adverse party with a fair opportunity to challenge it. As used in this subsection, "certifies" means, with respect to a domestic record, a written declaration under oath subject to the penalty of perjury and, with respect to a foreign record, a written declaration signed in a foreign country which, if falsely made, would subject the maker to criminal penalty under the laws of that country. The certificate relating to a foreign record must be accompanied by a final certification as to the genuineness of the signature and official position (i) of the individual executing the certificate or (ii) of any foreign official who certifies the genuineness of signature and official position of the executing individual or is the last in a chain of certificates that collectively certify the genuineness of signature and official position of the executing individual. A final certification must be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country who is assigned or accredited to the United States.

of occurrence and not in anticipation of trial.” *Large v. Cafferty Realty, Inc.*, 123 Idaho 676, 683, 851 P.2d 972, 979 (1993) (citing *Beco Corp. v. Roberts & Sons Const. Co.*, 114 Idaho 704, 711, 760 P.2d 1120, 1127 (1988)). While the admission of a business record does not require testimony by the person who actually prepared the document, “[t]he test is whether [the custodian] has knowledge of the system used to make the record and not whether [the custodian] has knowledge of [the] contents of the record.” *Id.* (citing *Report of the Idaho State Bar Evidence Committee*, C 803, p. 10 (4th Supp.1985)).

That is, the record must be authenticated by someone “who has custody of the record as a regular part of his or her work or who has supervision of its creation.” A document is not admissible under I.R.E. 803(6) unless the person testifying has a personal knowledge of the recordkeeping system used by the business which *created* the document.

Hill, 140 Idaho at 628, 97 P.3d at 1017 (internal citations omitted).

Ms. Chadwick clearly states her affidavit is made upon her own personal knowledge. She further testifies she is familiar with the documents maintained by the Idaho Department of Health and Welfare through her role as office services supervisor. Furthermore, she states that each document is kept in the normal course of business at the Department. As an office services supervisor, Ms. Chadwick is a qualified witness under that role. The Plaintiff did not provide any independent evidence to challenge that conclusion. Thus, the affidavit clearly satisfies the requirements of IRE 803(6), as explained previously, and the records submitted along with that affidavit are also admissible pursuant to that exception to the hearsay rule. Therefore, this Court hereby DENIES the Plaintiff’s request to strike the Affidavit of Sue Chadwick and the accompanying exhibits.

2. **Whether to grant the motion for summary judgment.**

a. **Summary Judgment Standard of Review**

Summary judgment shall be rendered “if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” IDAHO R. CIV. P. 56(c)(2012). The burden of establishing the absence of a genuine issue of material fact rests at all times with the party moving for summary judgment. *Tingley v. Harrison*, 125 Idaho 86, 89, 867 P.2d 960, 963 (1994). This Court liberally construes the record in favor of the party opposing the motion and draws all reasonable inferences and conclusions in that party’s favor. *Friel v. Boise City Hous. Auth.*, 126 Idaho 484, 485, 887 P.2d 29, 30 (1994). If the evidence reveals no disputed issues of material fact, then summary judgment should be granted. *Loomis v. City of Hailey*, 119 Idaho 434, 437, 807 P.2d 1272, 1275 (1991).

If the moving party challenges an element of the non-moving party’s case on the basis that no genuine issue of material fact exists, the burden now shifts to the non-moving party to come forward with sufficient evidence to create a genuine issue of fact. *Tingley*, 125 Idaho at 90, 867 P.2d at 964. Summary judgment is properly granted in favor of the moving party when the nonmoving party fails to establish the existence of an element essential to that party’s case upon which that party bears the burden of proof at trial. *Thomson*, 126 Idaho at 530-31, 887 P.2d at 1037-38; *Badell v. Beeks*, 115 Idaho 101, 102, 765 P.2d 126, 127 (1988). The party opposing the summary judgment motion “may not rest upon the mere allegations or denials of that party’s pleadings, but the party’s response, by affidavits or as otherwise provided in this rule, must set

forth specific facts showing that there is a genuine issue for trial.” IDAHO R. CIV. P. 56(e)(2012) (emphasis added).

b. Discussion

As explained, this case arises from the injuries sustained by the Plaintiff on September 27, 2010, when he was shot by Defendant Simpson. The Plaintiff set forth several causes of action in his Complaint. Of relevance to the pending Motion for Summary Judgment, the Plaintiff made a request for a declaration that his “rights as a victim of a violent crime” were violated, an injunction requiring the State to abide by the rights afforded to crime victims pursuant to the Idaho Constitution Article I, § 22 and the Idaho Code § 19-5306, and a claim for negligence against the State of Idaho for ceasing supervision of Mr. Simpson. By that claim, the Plaintiff argues the State is responsible for the actions of Mr. Simpson because the State “assumed responsibility” for him. (*See* Compl. and Demand for Jury Trial, Sept. 25, 2012, 1-14.)

1. Claims related to a violation of the Victim Rights Statute

Pursuant to his complaint, the Plaintiff asserts this lawsuit was filed “to enforce the rights of a victim of a violent crime and also to insure that the rights of other victims and potential victims are protected.” (*See* Compl. and Demand for Jury Trial at 1; First Am. Compl. and Demand for Jury Trial, Jan. 31, 2013, 1.) Specifically, Mr. Mitchell is seeking a “declaratory judgment pursuant to Idaho Code § 10-1201, et seq., declaring that the State of Idaho ... violated his rights under the Idaho Constitution, Article I, Section 22 and Idaho Code Section 19-5306.” (First Am. Compl. and Demand for Jury Trial at 15.) The Defendant counters that “no cause of

action exists with respect to [Mr. Mitchell's] victims' rights." (Mem. in Supp. of Mot. for Summ. J., June 28, 2013, 7.)

Crime Victims are entitled to certain rights under the Idaho constitution and code, including the right to be treated with fairness, respect, dignity and privacy throughout the criminal justice process, the right to prior notification regarding court proceedings and the release of the defendant, the right to be present at all criminal justice proceedings, and the right to be heard, upon request, at all criminal justice proceedings considering a plea of guilty, sentencing, incarceration or release of the defendant.⁴ IDAHO CONST. ART. I, § 22; *see also* IDAHO CODE ANN. § 19-5306(2012). These rights do not create "a cause of action for money damages, costs or attorney's fees against the state, a county, a municipality, any agency,

⁴ **Article I. Declaration of Rights**

§ 22. Rights of crime victims

A crime victim, as defined by statute, has the following rights:

- (1) To be treated with fairness, respect, dignity and privacy throughout the criminal justice process.
- (2) To timely disposition of the case.
- (3) To prior notification of trial court, appellate and parole proceedings and, upon request, to information about the sentence, incarceration and release of the defendant.
- (4) To be present at all criminal justice proceedings.
- (5) To communicate with the prosecution.
- (6) To be heard, upon request, at all criminal justice proceedings considering a plea of guilty, sentencing, incarceration or release of the defendant, unless manifest injustice would result.
- (7) To restitution, as provided by law, from the person committing the offense that caused the victim's loss.
- (8) To refuse an interview, ex parte contact, or other request by the defendant, or any other person acting on behalf of the defendant, unless such request is authorized by law.
- (9) To read presentence reports relating to the crime.
- (10) To the same rights in juvenile proceedings, where the offense is a felony if committed by an adult, as guaranteed in this section, provided that access to the social history report shall be determined by statute.

Nothing in this section shall be construed to authorize a court to dismiss a case, to set aside or void a finding of guilt or an acceptance of a plea of guilty, or to obtain appellate, habeas corpus, or other relief from any criminal judgment, for a violation of the provisions of this section; nor be construed as creating a cause of action for money damages, costs or attorney fees against the state, a county, a municipality, any agency, instrumentality or person; nor be construed as limiting any rights for victims previously conferred by statute. This section shall be self-enacting. The legislature shall have the power to enact laws to define, implement, preserve, and expand the rights guaranteed to victims in the provisions of this section.

instrumentality or person.” IDAHO CONST. ART. I §22.⁵ However, pursuant to Idaho Code § 10-1201, “[c]ourts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed.” IDAHO CODE ANN. § 10-1201 (2012).⁶

The Plaintiff argues he is entitled to the requested relief because the Idaho Legislature only eliminated claims for money damages, “but did **not** eliminate claims for other remedies like declaratory or injunctive relief as Mr. Mitchell is pursuing with his first two claims in his Complaint.” (Mem. in Opp’n at 9.) Mr. Mitchell states: “There is **nothing** in the Constitutional language of Article I, Section 20 (the “Constitutional Rights of Crime Victims”), or the statutory language of Idaho Code Section 19-5306 (the “Victim Rights Statute”), that would abolish a cause of action for declaratory or injunctive relief.” (*Id.* at 10.) The Plaintiff also argues he is entitled to declaratory and/or injunctive relief under Idaho Code § 10-1201, which, as cited, provides Idaho Courts with powers “to declare rights, status and other legal relations, whether or not further relief is or could be claimed.” (*Id.*)

“There is case law to the effect that various rights provided to crime victims under state constitutional and statutory victims’ rights clauses, such as the right to be present at trial, were

⁵ **Article I, § 22.** Nothing in this section shall be construed ... as creating a cause of action for money damages, costs or attorney fees against the state ... ; nor be construed as limiting any rights for victims previously conferred by statute. This section shall be self-enacting. The legislature shall have the power to enact laws to define, implement, preserve, and expand the rights guaranteed to victims in the provisions of this section.

⁶ **§ 10-1201. Declaratory judgments authorized--Form and effect**
Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect, and such declarations shall have the force and effect of a final judgment or decree.

enforceable by the victims, with the courts reasoning in part that the provisions were self-executing, were not merely directory, or that they gave the victim standing.” Jay M. Zitter, Annotation, *Validity, Construction, and Application of State Constitutional or Statutory Victims’ Bill of Rights*, 91 A.L.R.5th 343 (2001) (citing *Landon v. State*, 1999 WL 46543 (Alaska Ct. App. 1999); *Melissa J. v. Superior Court*, 190 Cal.App.3d 476, 237 Cal.Rptr. 5 (1st Dist. 1987); *State in Interest of K.P.*, 311 N.J. Super. 123, 709 A.2d 315 (Ch.Div. 1997); *Salt Lake City v. Johnson*, 959 P.2d 1022 (Utah Ct. App. 1998)). In other cases, “the courts ruled that although state constitutional and statutory victims’ rights clauses gave crime victims various rights, such rights were not enforceable in general as such or were not enforceable in separate actions, as the provisions were merely directory and not mandatory, or were not self-executing.” *Id.* (citing *State v. Lamberton*, 183 Ariz. 47, 899 P.2d 939 (1995); *People v. Superior Court (Thompson)*, 154 Cal.App.3d 319, 202 Cal.Rptr. 585, 17 Ed.Law Rep. 541 (2nd Dist. 1984); *State ex rel. Lamm v. Nebraska Bd. of Pardons*, 260 Neb. 1000, 620 N.W.2d 763 (2001); *Bandoni v. State*, 715 A.2d 580 (R.I. 1998)). The United States Supreme Court has explained that “[a] constitutional provision may be said to be self-executing if it supplies a sufficient rule by means of which the right given may be enjoyed and protected, or the duty imposed may be enforced; and it is not self-executing when it merely indicates principles, without laying down rules by means of which those principles may be given the force of law.” *Davis v. Burke*, 179 U.S. 399, 403, 21 S. Ct. 210, 212, 45 L. Ed. 249 (1900).

For example, in the *Lamm* case cited above, the Nebraska Supreme Court denied a writ of mandamus requested by the family of a murder victim to make an oral or written statement at the

hearing regarding the commutation of the convict's sentence. *State ex rel. Lamm v. Nebraska Bd. of Pardons*, 260 Neb. 1000, 1001, 620 N.W.2d 763, 766 (2001). The Nebraska Court found that because the Constitutional provision in question did not explicitly provide for the relief requested, and the alternative statutes providing for mandamus relief were not specifically referenced as a means for effectuating the rights included in the provision, the constitutional provision was not self-executing and thus could not be enforced under its own terms or the alternatives argued by the petitioners. *Id.* at 1006, 620 N.W.2d at 768-69.

In this case, the Plaintiff requested relief that is not provided for under either the State Constitution or the Victim's Rights Statute. Just as in Nebraska, neither the Idaho Constitution nor the Victim's Rights Statute creates a mechanism for enforcement of the stated rights. *Id.* While the Plaintiff argues that the rights should still be enforceable under the broad grant of power to Idaho courts to make declaratory judgments as provided by IC §10-1201, because neither the constitutional provision, nor the Victim Rights Statute reference IC § 10-1201, that statute cannot be a means of enforcing the directory language of the victim rights provisions. Thus, the Plaintiff's claims pertaining to injunctive and declaratory relief fail to state a cause of action and summary judgment as to those claims is appropriate.

2. Tort Claims Act

The Plaintiff brought a negligence claim against the Defendant, alleging "the State of Idaho had assumed a guardianship or special relationship over Simpson" and that "the State breached and abandoned its duties and obligations to monitor Simpson's daily life, keep him on his medications and insure that Simpson did not become a threat to himself or others." (Compl.

and Demand for Jury Trial at 14.) The Plaintiff further stated: “[T]he State acted with a sufficient degree of negligence, gross negligence, recklessness and/or willfulness to support an action under the Idaho Tort Claims Act. That is, the State acted negligently, recklessly and or willfully when it stopped supervising Simpson which allowed him to become a danger to whomever he might encounter.” (*Id.* at 15.) As such, the Plaintiff claims the State of Idaho is “responsible for all of the injuries resulting from Simpson’s shooting of Mr. Mitchell.” (*Id.*) The Defendant counters that summary judgment is appropriate because the Plaintiff “cannot establish liability against the State.” (Mem. in Supp. of Mot. for Summ. J. at 4.) Specifically, the State argues it is immune from liability under Section 6-904 of the Idaho Tort Claims Act (“ITCA”).

The Idaho Tort Claims Act provides for the liability of governmental entities in cases arising out of the negligent or wrongful acts or omissions of its entities, including those of its employees. *See* IDAHO CODE ANN. § 6-903(1)(2012).⁷ While liability is the rule, the ITCA does provide for certain, enumerated exceptions. *See Sherer v. Pocatello Sch. Dist. No. 25*, 143 Idaho 486, 492, 148 P.3d 1232, 1238(2006). The Idaho Supreme Court “has outlined a three-step

⁷ **§ 6-903. Liability of governmental entities--Defense of employees**

(1) Except as otherwise provided in this act, every governmental entity is subject to liability for money damages arising out of its negligent or otherwise wrongful acts or omissions and those of its employees acting within the course and scope of their employment or duties, whether arising out of a governmental or proprietary function, where the governmental entity if a private person or entity would be liable for money damages under the laws of the state of Idaho, provided that the governmental entity is subject to liability only for the pro rata share of the total damages awarded in favor of a claimant which is attributable to the negligent or otherwise wrongful acts or omissions of the governmental entity or its employees. When the claim for damages arises from construction, operation or maintenance of an impoundment, canal, lateral, drain or associated facilities that are under the supervision or control of the operating agency of irrigation districts whose board consists of directors of its member districts, then such board and its member districts shall be considered a single governmental unit and the claim may be brought and pursued only against the operating unit.

process in considering a motion for summary judgment with respect to a claim of governmental immunity under the Idaho Tort Claims Act. . . .” *Smith v. Bd. of Corr.*, 133 Idaho 519, 522, 988 P.2d, 1193, 1196 (1999). First, “the trial court must answer whether tort recovery is allowed under the laws of Idaho. . . .” *Id.* (quoting *Harris v. State Dep’t of Health & Welfare*, 123 Idaho 295, 298-99 n. 1, 847 P.2d 1156, 1159-60 n.1 (1992)). Second, if the first step has been met, the next question is, “whether an exception to liability found in the tort claims act shields the alleged misconduct from liability. . . .” *Id.* (quoting *Harris*, 123 Idaho at 298-99 n. 1, 847 P.2d at 1159-60 n.1). Lastly, “if no exception applies,” the court evaluates “whether the merits of the claim as presented for consideration on the motion for summary judgment entitle the moving party to dismissal.” *Id.* (quoting *Harris*, 123 Idaho at 298-99 n. 1, 847 P.2d at 1159-60 n.1).

Thus, the first question this Court must address is “whether tort recovery is allowed under the laws of Idaho.” Idaho Code § 6-903(1) allows for negligence claims to be brought against the State. The Plaintiff has alleged that the State acted negligently in releasing Mr. Simpson from its care and custody. Thus, the first requirement is met. Next, the Court must determine if an exception to liability exists in the Tort Claims Act. The State asserts that two exceptions apply. First, the State argues that IC § 6-904A(2) relieves the State of liability for the acts of third parties in the custody of the State. (Mem. in Supp. of Mot. for Summ. J. at 5.) Secondly, the State asserts that I.C. § 6-904(1) provides immunity for the State when acting within a “discretionary function.” (*Id.* at 6.)

“Under I.C. § 6-904A(2) the State generally enjoys immunity from suits in which a person is injured by another under the supervision of the State.” *Smith*, 133 Idaho at 522, 988 P.2d at 1196. Idaho Code §6-904A⁸ reads in pertinent part:

A governmental entity and its employees while acting within the course and scope of their employment and without malice or criminal intent and without reckless, willful and wanton conduct as defined in section 6-904C, Idaho Code, shall not be liable for any claim which: . . . 2. Arises out of injury to a person or property by a person under supervision, custody or care of a governmental entity.

“Section 6-904A(2) was intended to provide immunity to the State from the ‘unpredictable acts of third persons’ who are under the ‘state’s custody, supervision and care.’” *Smith*, 133 Idaho at 523, 988 P.2d at 1197 (citing *Harris v. State Dep’t of Health & Welfare*, 123 Idaho 295, 299, 847 P.2d 1156, 1160 (1992)).

To overcome State immunity under § 6-904A(2), [a plaintiff] must show that the State acted recklessly, willfully and wantonly. Idaho Code § 6-904C(2) provides that reckless, willful and wanton conduct ‘is present only when a person intentionally and knowingly does or fails to do an act creating unreasonable risk of harm to another, and which involves a high degree of probability that such harm will result.’

Id. (quoting IC § 6-904C(2)).

The Defendant argues that Mr. Simpson was not in the custody and care of the State at the time of the shooting. This Court agrees. Mr. Simpson had clearly been released from State

⁸ § 6-904A. Exceptions to governmental liability

A governmental entity and its employees while acting within the course and scope of their employment and without malice or criminal intent and without reckless, willful and wanton conduct as defined in section 6-904C, Idaho Code, shall not be liable for any claim which:

1. Arises out of the assessment or collection of any tax or fee.
2. Arises out of injury to a person or property by a person under supervision, custody or care of a governmental entity or by or to a person who is on probation, or parole, or who is being supervised as part of a court imposed drug court program, or any work-release program, or by or to a person receiving services from a mental health center, hospital or similar facility.

custody at the time of the shooting. It is, in fact, Mr. Simpson's release that is the basis of the negligence claim brought by the Plaintiff. As such, the exception provided under Idaho Code § 6-904A(2) is inapplicable, and it is therefore irrelevant to this decision whether the State acted recklessly, willfully, and wantonly. This Court will next address whether the State is immune from liability pursuant to the "discretionary function" exception contained in the Idaho Tort Claims Act.

A governmental entity may be liable for claims that arise out of performance which is operational in nature, but the State will not be held liable for the performance of a discretionary function. *Lawton v. City of Pocatello*, 126 Idaho 454, 460, 886 P.2d 330, 336 (1994). Idaho Code § 6-904(1) specifically provides immunity for any claim which:

1. Arises out of any act or omission of an employee of the governmental entity exercising ordinary care, in reliance upon or the execution or performance of a statutory or regulatory function, whether or not the statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a governmental entity or employee thereof, whether or not the discretion be abused.

IDAHO CODE ANN. § 6-904(1)(2012). This Court must first look at the nature of the conduct to determine whether it is discretionary. *Lawton*, 126 Idaho at 460, 886 P.2d at 336. "Routine matters not requiring evaluation of broad policy factors will likely be 'operational,' whereas decisions involving a consideration of the financial, political, economic, and social effects of a particular plan are likely 'discretionary' and will be accorded immunity." *Id.*(internal citation omitted). Next, this court "evaluate[s] the challenged conduct in light of the dual policies served by the discretionary function exception: to permit those who govern to do so without being

unduly inhibited by the threat of liability and to limit judicial second-guessing of basic policy decisions entrusted to other branches of government.” *Id.* The Idaho Supreme Court has specifically explained that if the evidence indicates that a policy decision was made “due to budgetary constraints or other factors ... such a decision would be discretionary, as it would involve planning rather than operational activity, and the city would be immune from liability even if the decision was negligently made.” *Jones v. City of St. Maries*, 111 Idaho 733, 736-37, 727 P.2d 1161, 1164-65 (1986).

The State argues it released Mr. Simpson based on budgetary constraints, and offers the affidavits of Jodi Osborn and Sue Chadwick in support of that argument. (*See* Mem. in Supp. of Mot. for Summ. J. at 5.) In response, the Plaintiff argues that the affidavits upon which the State relies are inadmissible. (Mem. in Opp’n at 11-12.) This Court addressed the admissibility issue above and found the affidavits to be admissible and relevant. The Affidavit of Jodi Osborn establishes the Department of Health and Welfare did have its budget cut by over \$36 million, and the matching federal funds were also reduced. Additionally, Exhibit A attached to the Affidavit of Sue Chadwick explains that the IDHW set up criteria to evaluate which clients should be dropped from services in order to handle the reduced resources the Department was facing. Furthermore, although the treatment termination letter sent to Mr. Simpson from Dr. Sommer (Exhibit B to the Chadwick Affidavit) does not explicitly state that Mr. Simpson was being terminated due to budget constraints, when viewed in the context of Exhibit A, it becomes clear that budget cuts played a major role in the closure of Mr. Simpson’s case file. For example, Dr. Sommer explains that Mr. Simpson no longer meets the criteria for continued

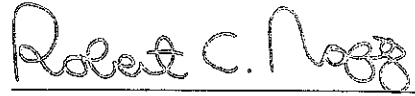
treatment, even though he may have benefited from that treatment, and Exhibit A explains that the criteria for which clients' case files could remain open had to be changed due to budgetary constraints. Thus, based on the evidence presented and viewing that evidence in the light most favorable to the non-moving party, it appears that the primary reason for Mr. Simpson's termination was a result of budgetary constraints. This type of decision is clearly part of the State's "discretionary function" and is therefore entitled to immunity under IC § 6-904(1). Thus, the State is shielded from the Plaintiff's negligence claims by sovereign immunity and summary judgment is therefore granted.

CONCLUSION

First, the Plaintiff's Rule 56(f) motion for a continuance was dismissed upon agreement of the parties; therefore, there was no need for this Court to address that matter. This Court denied both requests by the Plaintiff to strike the supporting affidavits submitted by the Defendant. This Court further determined the Plaintiff's claims pertaining to injunctive and declaratory relief failed to state a cause of action and summary judgment as to those claims was granted. This Court also found the State of Idaho is shielded from the Plaintiff's negligence claims pursuant to the immunity provisions of the Idaho Tort Claims Act. Therefore, summary judgment as to the negligence claims was also granted. Since no claims remain against the Defendant State of Idaho, this matter is hereby DISMISSED as to that Defendant.

IT IS SO ORDERED.

DATED this 23 day of December 2013.

A handwritten signature in cursive script, reading "Robert C. Naftz", written in dark ink.

ROBERT C. NAFTZ
DISTRICT JUDGE

Copies to:

Briane Nelson Mitchell/William L. Mauk (Attorneys for Plaintiff)
Thomas B. High (Attorney for Defendant State of Idaho)
Ian N. Service (Attorney for Defendant Bannock County)

2014 JAN 15

* * * * *

JUDGMENT

* * * * *

Robert C. Naftz
ROBERT C. NAFTZ – District Judge

486 of 503

MAILING CERTIFICATE


I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 6 day of January, 2014, to the following:

Briane Nelson Mitchell
MAUK & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743

Thomas B. High
BENOIT, ALEXANDER, HARWOOD
& HIGH, LLP
P.O. Box 366
Twin Falls, ID 83303-0366

Clerk of the Sixth Judicial District, County of Bannock

By


Deputy Clerk

ORIGINAL

WILLIAM L. MAUK (ISB #1825)
MAUK, MILLER & BURGOYNE
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BANNOCK COUNTY
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BY
DEPUTY CLERK

BRIANE NELSON MITCHELL (ISB #2346)
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nelsmitchell@gmail.com

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

RYAN M. MITCHELL,

Appellant,

vs.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity, and
BANNOCK COUNTY, IDAHO, a political
subdivision, SUSAN SIMPSON, as
Conservator and Guardian of Gerald Durk
Simpson, and DOES 1-25,

Respondents.

Case No. CV 12-4124 OC

NOTICE OF APPEAL

TO: THE ABOVE NAMED RESPONDENTS GERALD DURK SIMPSON, STATE OF IDAHO, BANNOCK COUNTY, IDAHO AND SUSAN SIMPSON, AND THE PARTIES' ATTORNEYS, THOMAS B. HIGH, BREN E. MOLLERUP OF BENOIT, ALEXANDER, HARWOOD & HIGH, LLP, AND IAN N. SERVICE OF THE BANNOCK COUNTY PROSECUTING ATTORNEY'S OFFICE, AND THE CLERK OF THE ABOVE-ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

NOTICE OF APPEAL - 1

1. The above named appellant, Ryan M. Mitchell, appeals against the above-named respondents to the Idaho Supreme Court from the Memorandum Decision and Order Granting Defendant State of Idaho's Motion for Summary Judgment entered in the above-entitled action on the 27th day of December, 2013 and from the Judgment of Dismissal entered in the above-entitled action on the 6th day of January, 2014, Honorable Robert C. Naftz, District Judge presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgment and order described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(1) I.A.R.

3. A preliminary statement of the issues on appeal which the appellant then intends to assert in the appeal:

- a) Whether the court erred in considering the State's conclusory hearsay affidavits and documents.
- b) Whether the court erred in construing the evidence in favor of the State, as the moving party.
- c) Whether the court erred in ignoring the evidence submitted by appellant, the non-moving party.
- d) Whether the court erred in refusing to rule on the pending motion to compel against the State.
- e) Whether the court erred in finding that the Rule 56(f) argument had been dismissed by agreement of the parties.
- f) Whether the court erred in finding that there are no remedies for victims of serious crimes under the Idaho Constitution (Article I, Section 22), or the Idaho Victims Rights Statute (Idaho Code, Section 19-5306).
- g) Whether the court erred in finding that the discretionary function exception was a shield protecting the state from liability.
- h) Whether the court erred in refusing to recuse himself and transfer the case to a judge who did not have the same type of conflict.

4. Has an order been entered sealing all or any portion of the record? No.

5.(a) Is a reporter's transcript requested? Yes.

(b) The appellant requests the preparation of the following portions of the reporter's transcript: Hearing on Defendant's Motion for Summary Judgment held on November 25, 2013.

6. The appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.

Date	Title of Pleading	Attorney
1/31/13	First Amended Complaint and Demand for Jury Trial	Mitchell
2/8/13	Notice of Service	Mauk
2/15/13	Notice of Appearance	High
2/25/13	Answer	High
2/25/13	Defendant: State of Idaho Attorney Retained	High
2/25/13	Notice of Service	High
3/4/13	Notice of Service	High
4/4/13	Notice of Service	High
6/12/13	Stipulation Consent Decree and Final Judgment Between Ryan M. Mitchell and Bannock County	Mitchell
6/28/13	Motion for Summary Judgment	High
6/28/13	Memorandum in Support of Motion for Summary Judgment	High
6/28/13	Affidavit in Support of Motion for Summary Judgment	High
6/28/13	Affidavit of Jodi Osborn	High
6/28/13	Statement of Undisputed Facts	High
7/17/13	Notice of Service	High
7/18/13	Notice of Hearing; set for 8/5/13	
7/18/13	Hearing Scheduled	
7/22/13	Amended Notice of Hearing	
7/22/13	Hearing Scheduled (Motion for Summary Judgment 8/12/13 4:00 pm)	
7/26/13	Notice of Rule 30(b)(6) Deposition	Mitchell
7/26/13	Notice of Deposition of Dr. Heath Sommer	Mitchell
7/26/13	Default Judgment – default entered against Gerald Simpson and Susan Simpson as Conservator/Guardian of Gerald Simpson	
7/29/13	Memorandum in Opposition to State's Motion for Summary Judgment	Mauk
7/29/13	Plaintiff's Statement of Undisputed Facts	Mauk
7/29/13	Affidavit of Sally Anderson in Support of Plaintiff's Opposition to State's Motion for Summary Judgment	Mauk
7/30/13	Motion for Protective Order	High
8/1/13	Notice of Service of Discovery Document	High

Date	Title of Pleading	Attorney
8/12/13	Hearing result for Motion for Summary Judgment Scheduled on 8/12/13 4:00 PM: Hearing Vacated	
8/21/13	Disqualification of Judge – Self	
8/21/13	Administrative Order of Reference; matter reassigned to Judge Naftz for resolution	
8/27/13	Motion to Compel Against the State of Idaho	Mitchell
8/27/13	Memorandum in Support of Motion to Compel	Mitchell
8/27/13	Affidavit of Briane Nelson Mitchell in Support of Motion to Compel	Mitchell
9/3/13	Final Judgment between Ryan M. Mitchell and Bannock County	
9/16/13	Plaintiff's Motion to Disqualify for Cause	Mitchell
9/16/13	Memorandum in Support of Motion to Disqualify for Cause	Mitchell
9/16/13	Affidavit of Briane Nelson Mitchell in Support of Motion to Disqualify for Cause	Mitchell
9/23/13	Memorandum in Response to Plaintiff's Motion to Disqualify for Cause	High
10/23/13	Hearing Scheduled (Motion to Compel 11/25/13 2:30 PM)	
10/23/13	Hearing Scheduled (Motion for Summary Judgment 11/25/13 2:30 PM)	
10/23/13	Notice of Withdrawal of Motion for Protective Order	High
10/28/13	Notice of Hearing; set for Plaintiff's Motion to Compel on 11-24-13 @ 2:30pm	
11/18/13	Notice of Service of Discovery Documents	High
11/21/13	Affidavit of Ryan M. Mitchell in Support of Damage Determination	Mitchell
11/21/13	Application for Entry of Damage Award in Connection with Default Judgment	Mitchell
11/22/13	Notice of Service	Rodriguez
11/25/13	Hearing result for Motion to Compel	
11/25/13	Hearing result for Motion for Summary Judgment	
11/25/13	Case Taken Under Advisement	
11/25/13	Second Affidavit of Briane Nelson Mitchell in Support of Motion to Compel Discovery Against the State of Idaho	Mitchell
11/25/13	Plaintiff's Request for Judicial Notice in Support of Motion to Compel	Mitchell
11/25/13	Response to Plaintiff's Motion to Compel	High
11/25/13	Affidavit of Thomas B. High in Support of Defendant State of Idaho's Response to Plaintiff's Motion to Compel	High

Date	Title of Pleading	Attorney
	Idaho's Response to Plaintiff's Motion to Compel	
11/25/13	Reply Brief Memorandum in Support of Motion to Compel Against the State of Idaho	Mitchell
11/25/13	Plaintiff's Request for Judicial Notice in Support of Motion to Compel	Mitchell
11/25/13	Second Affidavit of Briane Nelson Mitchell in Support of Motion to Compel Discovery Against the Defendant State of Idaho	Mitchell
11/25/13	Reply Memorandum in Support of Motion to Compel	Mitchell
11/29/13	Monetary Judgment Against Defendants Gerald Durk Simpson and Susan Simpson	
11/29/13	Judgment	
11/29/13	Case Status Changed: Closed	
12/27/13	Memorandum Decision and Order	
1/6/14	Judgment	

7. I certify:

(a) that a copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

Name and address: Stephanie Davis, 624 E. Center St., Pocatello, ID 83201

(b) (1) ☒ That the clerk of the district court has been paid the estimated fee for preparation of the reporter's transcript. Plaintiff's counsel has notified Stephanie Davis and is awaiting an estimate for the transcript.

(2) ☐ That the appellant is exempt from paying the estimated transcript fee because N/A

(c) (1) ☒ That the estimated fee for preparation of the clerk's record has been paid.


(2) ☐ That appellant is exempt from paying the estimated fee for preparation of the record because N/A

(d) (1) ☒ That the appellate filing fee has been paid.

(2) ☐ That appellant is exempt from paying the appellate filing fee because N/A

DATED This ¹²11th day of February, 2014.

Respectfully submitted,

By 
Briane Nelson Mitchell
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of February, 2014, I caused a true and correct copy of the above and foregoing instrument to be served upon the following individuals in the manner indicated below:

Susan Simpson
765 Channing Ave.
Palo Alto, CA 94301
ssimpsonbv@gmail.com

☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

*As Conservator and Guardian of
Gerald Durk Simpson*

Thomas B. High
Bren E. Mollerup
Benoit, Alexander, Harwood & High, LLP
126 Second Avenue North
P.O. Box 366
Twin Falls, ID 83303-0366

☒ U.S. Mail
☐ Facsimile
☐ Email
☐ Hand Delivery

Attorneys for Defendant State of Idaho

Ian N. Service
Bannock County Prosecutor's Office
624 E Center
P.O. Box P
Pocatello, ID 83201

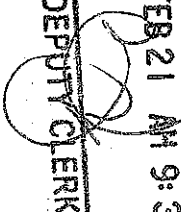
☒ U.S. Mail
☐ Facsimile
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Attorneys for Defendant Bannock County



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Attorneys for Respondent State of Idaho
(Appeal\16105\Request for Additional Record\TBH\ka)

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IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RYAN M. MITCHELL,

Appellant,

v.

GERALD DURK SIMPSON, an individual,
STATE OF IDAHO, a governmental entity,
and BANNOCK COUNTY, IDAHO, a
political subdivision, SUSAN SIMPSON, as
Conservator and Guardian of Gerald Durk
Simpson, and DOES 1-25,

Respondents.

Case No. CV-12-4124-OC

**REQUEST FOR ADDITIONAL
RECORD**

TO: THE ABOVE NAMED APPELLANT AND THE PARTY'S ATTORNEY, AND THE
CLERK OF THE ABOVE ENTITLED COURT.

REQUEST FOR ADDITIONAL RECORD - 1

NOTICE IS HEREBY GIVEN, that the Respondent, State of Idaho, in the above entitled proceeding hereby requests pursuant to Rule 19, I.A.R., the inclusion of the following material in the Clerk's Record in addition to that required to be included by the I.A.R. and the Notice of Appeal.

1. Clerk's Record:

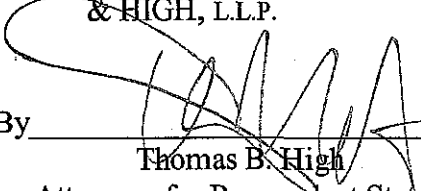
- (a) 8/5/13 -- Reply to Plaintiff's Memorandum in Opposition to State's Motion for Summary Judgment. (Thomas B. High, Attorney for Defendant State of Idaho)
- (b) 9/19/13 - Order Denying Motion to Disqualify.
- (c) 11/26/13 - Objection to the Proposed Final Monetary Judgment Against Defendant Gerald Durk Simpson and Susan Simpson as Conservator and Guardian (Thomas B. High, Attorney for Defendant State of Idaho)

2. I certify that this Request for Additional Record has been served upon the Clerk of the District Court and upon all parties required to be served pursuant to Rule 20.

DATED this 19th day of February, 2014.

BENOIT, ALEXANDER, HARWOOD
& HIGH, L.L.P.

By


Thomas B. High

Attorneys for Respondent State of Idaho

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 126 Second Avenue North, Twin Falls, Idaho, certifies that on the 19th day of February, 2014, he caused a true and correct copy of the **REQUEST FOR ADDITIONAL RECORD** to be forwarded with all required charges prepaid, by the method(s) indicated below, to the following:

William L. Mauk
MAUK, MILLER & BURGOYNE
P.O. Box 1743
Boise, ID 83701-1743
(Attorneys for Plaintiff)

Hand Delivered
U.S. Mail
Fax
Fed. Express

☐
☒
☐
☐

Briane Nelson Mitchell
Attorney at Law
P.O. Box 8046
Boise, ID 83707-8046
(Attorney for Plaintiff)

Hand Delivered
U.S. Mail
Fax
Fed. Express

☐
☒
☐
☐

Susan Simpson
765 Channing Ave.
Palo Alto, CA 94301
(Conservator and Guardian of
Gerald Durk Simpson)

Hand Delivered
U.S. Mail
Fax
Fed. Express

☐
☒
☐
☐



Thomas B. High

FILED
BANNOCK COUNTY
CLERK OF THE COURT

2014 APR -1 PM 1:12

BY S. DAVIS
DEPUTY CLERK

DOCKET NO. 41882-2014
(
(
(
(RYAN MITCHELL
(
(
(vs.
(
(STATE OF IDAHO

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on 3/31/14 I lodged a transcript including the following proceedings: (11/25/13-MSJ) for the above-referenced appeal with the Sixth Judicial District, District Court Clerk of the County indicated:

(XX) BANNOCK

() POWER

() ONEIDA

() BEAR LAKE

() FRANKLIN

() CARIBOU

via:

() Hand-Delivery

() U.S. Mail

(XX) **Electronic Copy to ISC/COA; AG; SAPD**

(Signature of Reporter)

S. DAVIS

(Typed name of Reporter)

3/31/2014

(Date)

cc:

Diane Cano, dianec@bannockcounty.us
[ISC/COA- kloertscher@idcourts.net](mailto:ISC/COA-kloertscher@idcourts.net)
[ISC/COA- klehrman@idcourts.net](mailto:ISC/COA-klehrman@idcourts.net)



RECEIVED
IDAHO SUPREME COURT
COURT OF APPEALS 2014

2014 MAR 13 AM 9:07

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

March 3, 2014

SPECIAL DEPUTY ATTORNEY GENERAL APPOINTMENT

TO WHOM IT MAY CONCERN:

Thomas B. High of the firm of Benoit, Alexander, Harwood & High, LLP, P. O. Box 366, Twin Falls, Idaho 83303-0366, is hereby appointed Special Deputy Attorney General for the purpose of representing the State of Idaho in *Mitchell v. Simpson, et al.*, Docket No. 41882.

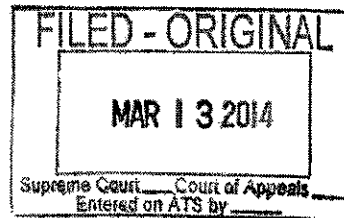
This letter of appointment will be included in the files of any court case, hearing or other matter in which he represents the State of Idaho in this matter. This appointment is effective for the duration of the above-stated case.

Any courtesies you can extend to Mr. High in his conduct of business for the State of Idaho, as my delegate, will be appreciated.

Sincerely,

LAWRENCE G. WASDEN
Attorney General

LGW:blm



IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RYAN M. MITCHELL,)	
)	
Plaintiff-Appellant,	)	Supreme Court No. 41882
)	
v.)	
)	
GERALD DURK SIMPSON, an individual,	)	CLERK'S CERTIFICATE
STATE OF IDAHO, a governmental entity))	
and BANNOCK COUNTY, IDAHO, a)	
political subdivision, SUSAN SIMPSON,)	
as Conservator and Guardian of Gerald)	
Durk Simpson, and DOES 1-25,)	
)	
Defendant-Respondents,)	
)	
)	
)	

I, Robert Poleki, Clerk of the District Court of the Sixth Judicial District, of the State of Idaho, in and for the County of Bannock, do hereby certify that the above and foregoing record in the above-entitled cause was compiled and bound under my direction as, and is a true, full, and correct record of the pleadings and documents as are automatically required under Rule 28 of the Idaho appellate Rules.

I do further certify that there were no exhibits marked for identification or admitted into evidence during the course of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Pocatello, Idaho, this 22 day of April 2014.

(Seal)



ROBERT POLEKI,
Clerk of the District Court
Bannock County, Idaho Supreme Court

By 
Deputy Clerk

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

RYAN M. MITCHELL,)	
)	
Plaintiff-Appellant,	)	Supreme Court No. 41882
)	
v.)	
)	
GERALD DURK SIMPSON, an individual,	)	CLERK'S CERTIFICATE OF
STATE OF IDAHO, a governmental entity)	)	SERVICE
and BANNOCK COUNTY, IDAHO, a)	
political subdivision, SUSAN SIMPSON,)	
as Conservator and Guardian of Gerald)	
Durk Simpson, and DOES 1-25,)	
)	
Defendant-Respondents,)	
)	
)	
)	

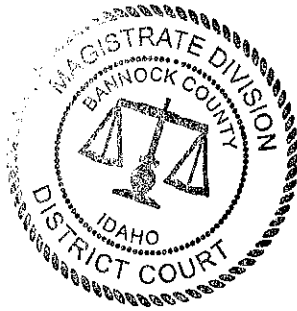
I, ROBERT POLEKI, Clerk of the District Court of the Sixth Judicial District,
of the State of Idaho, in and for the County of Bannock, do hereby certify that I
have personally served or mailed, by United States mail, one copy of the
REPORTER'S TRANSCRIPT and CLERK'S RECORD to each of the Attorneys of
Record in this cause as follows:

William L. Mauk
Briane Nelson Mitchell
MAUK & BURGOYNE
Post Office Box 1743
Boise, Idaho 83701-1743

Thomas B. High
Bren E. Mollerup
BENOIT, ALEXANDER
Post Office Box 366
Boise, Idaho 83303-0366

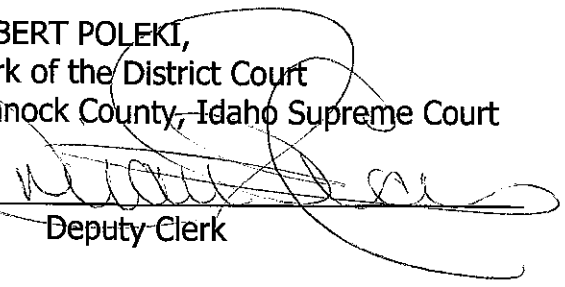
IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal
of said Court at Pocatello, Idaho, this _____ day of _____, 2014.

(Seal)



ROBERT POLEKI,
Clerk of the District Court
Bannock County, Idaho Supreme Court

By


Deputy Clerk